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Epicurean Justice and Law

Abstract

This dissertation concerns a cluster of related issues surrounding the Epicurean conception of justice. First, I show that the Epicureans defend a sophisticated kind of social contract theory and maintain a kind of legal positivism, views that are widely held today and so are of continuing interest for contemporary readers. In doing so, I argue that thinking about justice and law forms an integral part of Epicurean philosophy (pace the standard view). Second, I take up some neglected issues regarding justice and so provide detailed accounts of the metaphysics of moral properties in Epicureanism as well as of Epicurean moral epistemology.

After the introduction in chapter 1, I set out the main features of the Epicurean view of justice and law in chapters 2-4. In chapter 2, I explain the basics of the Epicurean conception of justice as an agreement and relate it to Epicurean ethics as whole. In chapter 3, I examine Epicurean culture stories and I point out in what way the Epicurean view is a kind of social contract theory. In chapter 4, I argue that the most important aspect of the Epicurean conception of justice from a metaethical perspective is that justice, a moral fact, depends on benefit, a natural fact about the world. On the basis of this analysis, I subsequently argue that the Epicurean conception of the law is best understood as a kind of inclusive positivism.

After having laid out the Epicurean view in this way, I enlarge the conversation in chapters 5-7. In chapter 5, I discuss the motivations Epicurean agents have to be just and comment on the relationship between contractual justice, that is, justice that comes about by agreements, and aretetic justice, that is, justice understood as a virtue or character disposition. In chapter 6, I turn to the metaphysics of justice, arguing that the just, for the Epicureans, is an accidental property. In chapter 7, finally, I show that Epicurean agents come to have an understanding of justice via sense experience in the same way that they have an understanding of everyday objects.

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Jan Maximilian Robitzsch

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EPICUREAN JUSTICE

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Jan Maximilian Robitzsch

Für

meine Eltern

Christine Weber-Robitzsch

und

Lutz-Henning Robitzsch

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ABSTRACT

EPICUREAN JUSTICE AND LAW

Jan Maximilian Robitzsch

Susan Sauvé Meyer

This dissertation concerns a cluster of related issues surrounding the Epicurean conception of justice. First, I show that the Epicureans defend a sophisticated kind of social contract theory and maintain a kind of legal positivism, views that are widely held today and so are of continuing interest for contemporary readers. In doing so, I argue that thinking about justice and law forms an integral part of Epicurean philosophy (*pace* the standard view). Second, I take up some neglected issues regarding justice and so provide detailed accounts of the metaphysics of moral properties in Epicureanism as well as of Epicurean moral epistemology.

After the introduction in chapter 1, I set out the main features of the Epicurean view of justice and law in chapters 2-4. In chapter 2, I explain the basics of the Epicurean conception of justice as an agreement and relate it to Epicurean ethics as whole. In chapter 3, I examine Epicurean culture stories and I point out in what way the Epicurean view is a kind of social contract theory. In chapter 4, I argue that the most important aspect of the Epicurean conception of justice from a metaethical perspective is that justice, a moral fact, depends on benefit, a natural fact about the world. On the basis of this analysis, I subsequently argue that the Epicurean conception of the law is best understood as a kind of inclusive positivism.

After having laid out the Epicurean view in this way, I enlarge the conversation in chapters 5-7. In chapter 5, I discuss the motivations Epicurean agents have to be just and comment on the relationship between contractual justice, that is, justice that comes about by agreements, and aretetic justice, that is, justice understood as a virtue or character disposition. In chapter 6, I turn to the metaphysics of justice, arguing that the just, for the Epicureans, is an accidental property. In chapter 7, finally, I show that Epicurean agents come to have an understanding of justice via sense experience in the same way that they have an understanding of everyday objects.

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1. INTRODUCTION

This dissertation concerns a cluster of related issues surrounding the conception of justice and law that Epicurus of Samos (c. 340 to 270 BCE) and his followers during the Hellenistic period advanced.¹ While the Epicurean conception of justice and law has received some attention since the 1970s,² some contemporary introductions to ancient political thought or ancient legal thought still do not discuss Epicurean ideas at all.³ Others, in the wake of Herman Usener's remark in the *Epicurea* that "surely nobody will hold that those [*Principal Doctrines*] on political matters [...] are among the stronger teachings of Epicurus"⁴ – dismiss them as simplistic.⁵ This is unfortunate, since the Epicureans have an interesting contribution to make to the history of legal and political philosophy. On my reading, they defend a sophisticated social contract theory and argue

¹ On Epicurus as well as the Epicurean school, see especially Erler 1994 (including an extensive bibliography). Also important are DeWitt 1936, Schmid 1984 [1962], Steckel 1968, Longo Auricchio 1978, Frischer 1982, Clay 1983, Asmis 2001, and Clay 2010 [2009]. On Roman Epicureanism, see Castner 1988, Sedley 2010 [2009], and Erler 2010 [2009]. On Diogenes of Oenoanda, see Gordon 1996. Good recent introductions into Epicurean philosophy are Giovacchini 2008, O'Keefe 2010, and Verde 2013.

² The most important scholarly contributions on the Epicurean justice and law are Falchi 1902, Philippson 1910a, Philippson 1910b, Chroust 1953, Müller 1969a, Müller 1969b, Chroust 1971, Müller 1972, Goldschmidt 1976, Nichols 1976, Goldschmidt 1977, Goldschmidt 1981, Müller 1983, Long 1985, Vander Waerdt 1987, Müller 1988, Vander Waerdt 1988, Sprute 1989: 39ff., Annas 1993a: 293ff., Alberti 1995, Armstrong 1997, Minutoli 1997, Morel 2000, O'Keefe 2001a, Waggle 2003, Ranger 2007, Coleman 2012, and Thrasher 2013.

³ See, for instance, Böckenförde 2006.

⁴ *illa de rebus publicis [...] nemo profecto inter posteriora disciplinae Epicurae habebit*. Usener 1887: XLIV.

⁵ In Adomeit 2001, for instance, the chapter dealing with the Epicureans is entitled "Epikur oder das Müdewerden des griechischen Geistes" and at one point in the chapter, the author remarks in regard to an aspect of the Epicurean conception of law: "das ist nun wirklich die denkbar flachste Rechtsphilosophie!" (95).

for an interesting kind of legal positivism, theories that are still widely held today among political and legal philosophers.

Since mentioning the Epicureans and politics in the same sentence might cause some surprise, let me hasten to add that my emphasis here lies on *philosophy*, since in terms of practical politics, the Epicureans indeed advocate for a form of political quietism.⁶ One of Epicurus' most famous sayings is the imperative "live unnoticed [*lathē biōsas*]" and, elsewhere, Epicurus counsels the Sage not to be politically active.⁷ Furthermore, the withdrawal from a life among the many into a community of like-minded friends is the practical ideal for all Epicurean agents, not the active life of the *polis* or *res publica*.⁸

Given these suggestions, one can easily see how the Epicureans were understood as apolitical or antipolitical thinkers, especially since they lived at a time in Greek history that, after the rise of Alexander, was characterized by a loss in political freedom of formerly independent Greek city-states and by a shift from public to private

⁶ Even in terms of practical politics, as Geert Roskam convincingly argues in detail in his 2007 book, the Epicureans are not banned from participating in the public sphere. There are many situations, in which political activity may serve Epicurean interests better than an abstention from politics. It is instructive to compare the Epicurean with the Stoic position here, which is nicely captured in fr. 9 Usener (= Seneca, *On Leisure* 3.2): "Epicurus says: 'The Sage will not engage in politics, unless something disturbs him.' Zeno says: 'The Sage will engage in politics, unless something impedes him' [*Epicurus ait: 'Non accedet ad rem publicam sapiens, nisi si quid intervenerit.'* Zenon ait: '*Accedet ad rem publicam, nisi si quid impeditur*']."

⁷ Fr. 8 and 551 Usener.

⁸ See, for instance, KD 14. In a recent paper, Jeffrey Green argues for the view that the Epicureans should be understood as extrapolitical thinkers, rather than merely apolitical or anti-political ones. He characterizes such a view as follows: "[A]n extrapolitical perspective does not necessarily reject politics once and for all but continually looks to achieve a temporary or episodic transcendence of political commitments and concerns, often with the expectation of a future reentry into political life" (Green 2015: 493). While it is true that the Epicureans do not reject politics unconditionally, it seems to me to be a mischaracterization to claim that they continually hope to return to a political life. This seriously misconstrues what the best life for the Epicureans is.

concerns.⁹ However, as I argue in more detail in this dissertation *pace* scholars who maintain that thinking about the political realm only plays a negligible role in Epicureanism, the Epicureans also develop a sophisticated *theory* of justice and the law that forms an integral part of their *philosophy*. The main function of the Epicurean theory of justice and law is to help Epicurean agents achieve the ethical end in life, pleasure (*hēdonē*), understood as the freedom from mental distress (*ataraxia*) and from bodily pain (*aponia*). Justice and the laws regulate the interactions between human beings, which promote security, which in turn promotes freedom from mental distress and from bodily pain. In short, then, one might even go so far as to say that Epicurean philosophy would not be complete without its conception of justice and law.

The fact *that* justice and law play a key role in Epicureanism does not make the Epicurean conception of justice and law interesting, though. What earns the Epicurean conception this attribute is that the Epicureans argue for a kind of social contract theory and maintain a kind of legal positivism (that is, the view that the existence of law is based on social facts).¹⁰ This makes their view especially appealing to modern readers.

⁹ On the Hellenistic political thought and its historical background, see, for instance, Aalders 1975, Bichler 1988, or Habicht 1988. For a discussion of the relationship between philosophers and the active life in the 4th and 3rd century, see Scholz 1998.

¹⁰ Like any theory, the Epicurean theory was not created in a vacuum. Accordingly, the Epicureans probably drew heavily on older Presocratic and Sophistic theories in order to develop their ideas. The extent of influence is difficult to assess, since many of these theories have come down to us only in a fragmentary state and their interpretation is contested among scholars. A case in point is Democritus' ethical and political theory. Given what we know about Epicurus' dependency on Democritus in other areas of his philosophy, one would also expect dependency in practical philosophy. Unfortunately, though, we are particularly poorly informed about Democritus' thought in regard to ethics and politics and so it is difficult to say what influence Democritus had on Epicurean doctrines. (For Democritean ethics, see Vlastos 1945, Vlastos 1946, Kahn 1985, Procopé 1989, and Procopé 1990. For the influence of Democritus and other Sophists on the Epicurean view, see Müller 1972, Sedley 1976, Huby 1977, Müller 1980, Müller 1984, and Warren 2002.) By contrast, the main target of the Epicurean conception of justice and the law seems to be the Platonic conception. This is especially clear in book II of the *Republic* where Glaucon develops a challenge to Socrates by setting out an account of justice that bears

After all, many contemporary political philosophers are sympathetic to social contract theory, and legal positivism is the dominant view in legal philosophy.

In chapters 2-4, I set out the main features of the Epicurean view of justice and the law. In chapter 2, I first situate the Epicurean conception of justice and law in Epicurean ethics as a whole in the way that I already briefly outlined above. Second, I describe the relationship between benefit and justice more closely since the Epicureans not only claim that justice consists in agreements, but also that agents agree on what is beneficial. And third, I discuss which parties are able to form agreements on the Epicurean conception.

In chapter 3, I turn to Epicurean justice and law from a diachronic perspective. I examine the Epicurean accounts of cultural development and point out in what way the Epicurean view is a kind of social contract theory. In accordance with early modern theories of the social contract, the Epicureans roughly distinguish between three

much similarity to the Epicurean one. According to this account, for instance, justice arises as a result of agreements agents form with each other because they fear suffering harm. Furthermore, agents practice justice only because they fear sanction mechanisms that are in place to prevent wrong-doing. Since the *Republic* as a whole can be read as Plato's answer to Glaucon's challenge, it is most tempting to read Epicurus as someone who is renewing Glaucon's argument, just as Glaucon had renewed Thrasymachus'. The precise relationship between the Aristotelian and the Epicurean conceptions of justice and the law is again more difficult to gauge. Ever since Bignone's magisterial two-volume 1936 study, the relationship between the two thinkers has been subject to much speculation (now see especially Jannone 1969). I will largely set aside possible Aristotelian influence in this investigation. Finally, the Skeptics and the Stoics play some role for the development of Epicurean doctrines on justice and the law, but this role is probably minor. In both cases, the influence seems to be detectable primarily in later Epicurean authors, after core Epicurean ideas have probably already been developed. (On innovation vs. tradition in Epicurean school, see the papers in Fish and Sanders 2011.) For instance, in Polystratus and Philodemus, one can find arguments against the relativity of the fine and shameful and other entities in the moral domain and so a view that a Skeptic might hold. However, since Skepticism only reemerges as a serious philosophical view after the Academy takes its Skeptical turn in 266 BCE and both Polystratus and Philodemus write after this date, it seems likely that these texts are to be explained as responses to the change in intellectual climate. The case of the Stoics is similar. For a more detailed case study, I refer the reader to chapter 3 where I discuss the competing readings of the cradle argument offered by the two schools and the possible debate about the doctrine of *oikeiōsis*.

separate phases of development: (1) the original state, in which human beings live dispersed, (2) a first *phusis*-phase of cultural development, in which human beings come together to form communities, and (3) a second *nomos*-phase of cultural development, in which human beings form legal and political states. These parts correspond to different degrees of establishment and human understandings of justice and the law. No justice and laws exist in the original state, while the first phase of development features justice without laws and the second phase both justice and laws.

In chapter 4, I draw on the results of the previous two chapters to work out the metaethical implications of the Epicurean conception of justice. I then classify the Epicurean theory of law in terms of the vocabulary of modern analytic philosophy of law. I begin by situating the Epicurean theory of justice in the ancient *nomos-phusis*-debate, claiming that the Epicurean view occupies a middle position between the view that justice is completely manmade or artificial and the view that it is completely natural. I argue that the most important aspect of the Epicurean theory of justice from a metaethical perspective is that justice, an ethical fact, depends on benefit, a natural fact, about the world. Consequently, I classify the Epicurean theory of justice as naturalistic. On the basis of this metaethical analysis, I subsequently argue in the second half of the chapter that the Epicurean conception of the law is best understood as a kind of inclusive positivism and I show in detail how this reading improves on previous attempts to describe the Epicurean position.

After having laid out the Epicurean view in this way, I enlarge the conversation in chapters 5-7 and paint a more complete picture of Epicurean conception of justice and law by discussing it from moral-psychological, metaphysical, and epistemological perspectives. In chapter 5, I discuss the motivations Epicurean agents have to be just

and comment on the relationship between contractual justice, that is, justice that comes about by agreements, and aretetic justice, that is, justice understood as a virtue or character disposition. I argue that generally contractual and aretetic justice operate in different spheres and have different addressees, but that the two spheres overlap insofar as on the most general level the content of the agreements that lead to justice (morality) both determine what is lawful and what is just (understood as a virtue). Furthermore, I show in this chapter that for non-Sages who do not grasp the usefulness of the law and for non-Sages who do, contractual justice is important to uphold order. However, non-Sages are motivated to be contractually just by following the laws, while Sages are just because they possess a virtuous character.

In chapter 6, I turn to the metaphysics of justice, arguing that the just, on the Epicurean view, is an accidental property. In doing so, I comment in detail on the claim of *Principal Doctrine* (*Kuria Doxa* = KD) 33 that there is no justice in itself (*kath' heauto*). *Pace* commentators who claim that it is a straightforward denial of a Platonic claim, I maintain that the criticism of Plato's view is indirect. To do so, I draw on the history and usage of the term '*kath' heauto*' in the Garden, Peripatos, and Academy. I then discuss in detail how the Epicurean understanding of justice compares and contrasts with the Platonic one. If properly understood, KD 33, on my reading, constitutes a whole-sale rejection of the Platonic theory of justice: *Pace* Plato, (1) justice is not an abstract entity, (2) it is not a universal in the way that the Form of justice could be said to be a universal, and (3) it in no way is the most real, most basic, and most fundamental entity in the ontological schema.

In chapter 7, finally, I argue that Epicurean agents come to have an understanding of justice in the same way that they have an understanding of everyday

objects. I establish this claim by appealing to the metaphysical status of the just as an accidental property that is ontologically in the same category as other non-moral accidental properties and to the Epicurean commitment to an atomistic theory of perception, according to which all accidental properties, which includes the just, can become objects of perception. Furthermore, I show in this chapter that Epicurean agents not only come to have an understanding of the just via sense experience, but that this understanding is itself non-inferential, that is, that it does not involve syllogistic reasoning in any way. To support this reading, I turn to Epicurean *prolēpseis* or preconceptions, which, on my reading, constitute a functional, non-inferential understanding of an object. I end with some implications of the Epicurean theory of *prolēpsis* for practical politics.

2. THE BASIC EPICUREAN VIEW: JUSTICE AS AN AGREEMENT

This chapter sets out what I take to be the basic Epicurean view: that justice consists of an agreement (*sunthēkē*) over not harming each other and not being harmed.¹¹

The doctrine of contractual justice is most clearly asserted in the *Principal Doctrines* (*Kuriai Doxai* = KD):¹²

KD 32. Nothing is just or unjust in relation to however many of those animals not able to form *agreements* over not harming and not being harmed; so too with however many of the peoples unable or unwilling to form *agreements* over not harming and not being harmed.¹³

KD 33. There is never any justice in itself, but an *agreement* over not harming and not being harmed in the dealings with each other in any place whatever at any time whatever.¹⁴

KD 35. There is no one who secretly violating any of the things *agreed* upon with each other in regard to not harming and not being harmed is confident that he will escape notice, even if for now, he escapes notice numberless times. For until his death, it is unclear whether he will escape notice.¹⁵

¹¹ *Sunthēkē* and its cognates can also be translated by ‘compact,’ ‘contract,’ or ‘covenant.’ I have chosen the translation ‘agreement’ because it is broader than compact, contract, or covenant, and, as this chapter will show, much better captures the idea that the kinds of agreements that Epicurean authors have in mind are often very generic and informal, which is not implied by the alternative translations just mentioned.

¹² See also Lucretius, *On the Nature of Things* V.1020.

¹³ Ὅσα τῶν ζῶων μὴ ἐδύνατο συνθήκας ποιεῖσθαι τὰς ὑπὲρ τοῦ μὴ βλάπτειν ἄλληλα μηδὲ βλάπτεσθαι, πρὸς ταῦτα οὐθὲν ἦν δίκαιον οὐδὲ ἄδικον· ὡσαύτως δὲ καὶ τῶν ἐθνῶν ὅσα μὴ ἐδύνατο ἢ μὴ ἐβούλετο τὰς συνθήκας ποιεῖσθαι τὰς ὑπὲρ τοῦ μὴ βλάπτειν μηδὲ βλάπτεσθαι. KD 32 = LS 22A; Trans. by Long and Sedley, modified; emphasis added.

¹⁴ Οὐκ ἦν τι καθ’ ἑαυτὸ δικαιοσύνη, ἀλλ’ ἐν ταῖς μετ’ ἀλλήλων συστροφαῖς καθ’ ὀπηλίκους δὴ ποτε αἰεὶ τόπους συνθήκη τις ὑπὲρ τοῦ μὴ βλάπτειν ἢ βλάπτεσθαι. KD 33. Trans. mine; emphasis added.

¹⁵ Οὐκ ἔστι τὸν λάθρα τι ποιοῦντα ὧν συνέθεντο πρὸς ἀλλήλους εἰς τὸ μὴ βλάπτειν μηδὲ βλάπτεσθαι, πιστεύειν ὅτι λήσει, κἄν μυριάκις ἐπὶ τοῦ παρόντος λανθάνῃ. Μέχρι γὰρ καταστρῆφῃς ἀδελὸν εἰ καὶ λήσει. KD 35. Trans. mine; emphasis added.

Furthermore, KD 31 claims:

The naturally just is a *sumbolon* of benefit in regard to not harming each other and not being harmed.¹⁶

There is some disagreement on how to translate the word '*sumbolon*' in the last text quoted.¹⁷ If it is understood to mean agreement, then KD 31 makes the same point as KD 32, 33, and 35. All four maxims then claim that justice is 'contractual,' albeit in somewhat different language. However, some commentators take '*sumbolon*' in KD 31 to mean token or expression.¹⁸ These commentators claim that Epicurus makes a more general point, namely, that *what is naturally* just is an expression of benefit. Regardless of what one takes *sumbolon* to mean, though, I will show in this chapter that Epicurus and the Epicureans both claim that there is a close relationship between justice and benefit *and* that there is a close relationship between justice and agreements.¹⁹ Since there is independent evidence for both these claims that do not rely on KD 31, not much hinges on the precise meaning of the word '*sumbolon*.'

In this chapter, I will first defend the thesis that the formula "not harming and not being harmed" is an explication of security (*asphaleia*), an important good in Epicurean theory (2.1.). Security in turn is beneficial (*sumpheron*) on the Epicurean view insofar as

¹⁶ Τὸ τῆς φύσεως δίκαιόν ἐστι σύμβολον τοῦ συμφέροντος εἰς τὸ μὴ βλάπτειν ἀλλήλους μηδὲ βλάπτεσθαι. Trans. mine.

¹⁷ On the meanings of the word *sumbolon*, see Müri 1976 and Struck 2004.

¹⁸ See, for instance, Schofield 2010 [2000]: 440, fn. 11 and Brown 2010 [2009]: 192, fn. 44. While indeed the meaning of '*sumbolon*' is first and above all 'agreement,' Aristotle (*On Interpretation* 16a4 and 24b2) already uses '*sumbolon*' in a philosophical context to mean 'token' or 'expression' and not merely 'agreement.' Epicurean usage of '*sumbolon*' as 'token' or 'expression' could thus be said to merely follow the precedent set by earlier thinkers such as Aristotle.

¹⁹ Besides KD 31, KD 36-38 also discuss the close relationship between justice and benefit.

the things pertaining to security promote the achievement of the highest goal, pleasure (*hēdonē*), understood as the freedom from bodily pain (*aponia*) and mental distress (*ataraxia*). Second, I will turn to how to understand the process of forming agreements from the Epicurean point of view (2.2.). I will argue that it is best understood as coming to a reciprocal understanding about which things – among a set of things that are beneficial – are most appropriate for agents in regard to the mutual dealings with each other given their circumstances. I will distinguish two forms of agreements, which foreshadows a key feature of Epicurean social contract theory and legal positivism that I discuss in more detail in subsequent chapters: (1) agreements that lead to justice and so more generally moral norms and (2) agreements that lead to the laws.²⁰ Third, I will discuss the requirements an agent must fulfill in order to form agreements (2.3.). I will argue that (1) while the Epicureans do not mention agreements with certain groups that are traditionally excluded, there is at least some evidence for agreements or at least agreement-like understandings with these groups and that (2) although Epicurean theory focuses on agreements and these agreements focus on the interests of the contracting parties, these interests are compatible with the just treatment of those who do not themselves form the agreements.

2.1. The Content of Agreements and Their Role in Epicurean Theory

In this section, I will explore the content of Epicurean agreements and the role agreements play in Epicurean theory as a whole. KD 32, 33, and 35, which were quoted above, specify that agreements are over “not harming and not being harmed.” I will argue that this means that Epicurean agreements are contracts over matters of security.

²⁰ One might think that these two types of agreements are equivalent to what are later called ‘*pactum unionis*’ and ‘*pactum subjectionis*’ (see, for instance, Cohen 2014: 96), but see also the comments in Müller 1985: 13.

However, this basic picture is complicated by KD 31, which also mentions benefit (*to sumpheron*) in regard to justice.²¹ In what follows, I will explain that for an agreement to be beneficial means for it to be conducive to obtaining the state of pleasure (understood as the freedom from bodily harm and mental distress) for the agreeing parties. While being secure is certainly beneficial in obtaining pleasure, it is unclear whether there are other things that can be agreed on in the same way as agents agree not to harm each other. Since there is some conflicting textual evidence on the matter, I will thus maintain at the end of the section that different Epicureans probably had varying conceptions about what counts as beneficial and so about what agreements amount to.

The *Principal Doctrines* quoted examined above all state that agreements that lead to justice consist in refraining from doing harm. On a first reading, perhaps the most intuitive understanding, harm can refer to the direct physical harm any individual may suffer. Refraining from harm then means that agents, for instance, pledge in agreements not to rob each other and not to kill each other.²² However, Tim O’Keefe suggests that refraining from harm may also include the indirect harm one could do to others.²³ For

²¹ Again, see also KD 36-38 that link justice in relation to benefit.

²² In this vein, it has been argued that Epicurean contractualism is the answer to a collective action problem: Agents are better off not being harmed, but because harming others is in some scenarios supposedly useful to agents, agents do not abstain from harming because the cost is higher than the confidence that they will actually receive the greater good of not being harmed. This results in a stalemate that is only resolved by the agreements. See Denyer 1983: 144ff. as well as Campbell 2002a and Campbell 2003: 256ff. While such a reading may be compelling at first, it struggles to explain that, on the Epicurean view, agents are not naturally disposed to harm others and that ideal agents, Sages, never commit an injustice (which includes harming) for profit. See fr. 582 Usener as well as the discussion in chapter 5.

²³ 2001a: 139ff. O’Keefe distinguishes between a narrow reading and an expansive reading of the claim that justice is an agreement not to harm each other. According the narrow reading, justice as an agreement not to harm each other excludes indirect harm, and according to the expansive reading, justice as an agreement not to harm each other includes indirect harm. Below, I distinguish between these two readings as well as a third reading according to which justice is an agreement over what is beneficial, which also includes direct obligations towards others.

instance, it may include that agents do not poison the local well or stream, which other members of the community use to fulfill one of their natural and necessary desires, such as the desire for drink. In this vein, Hermarchus explicitly mentions provisions that were put in place to refrain from killing certain animals like sheep and cattle, because they are useful to human beings to procure their daily livelihood.²⁴ Accordingly, when agents pledge not to harm each other in a mutual agreement, they – at times – seem to oblige themselves to cause neither direct nor indirect harm to those with whom they form an agreement.²⁵

It is difficult to say, though, whether the textual evidence really allows us to conclude that the phrase ‘not harming and not being harmed’ also includes indirect harm, as O’Keefe claims. After all, the distinction between direct and indirect harms has no equivalent in Greek and there is some danger of importing an anachronistic distinction. Furthermore, the textual evidence for cases of indirect harm is very slim.

But the question of indirect harm aside, the phrase “not to be harmed” also leaves open whether ‘not to be harmed’ means ‘not being harmed by other people’ or more broadly ‘not being harmed by other people as well as by animals and any other potential sources of harm.’ That is, are agreements made only among contracting parties or are they made among contracting parties *and* against third parties? The textual evidence seems to suggest that harm from third parties is also to be included in the

²⁴ Hermarchus, fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.11.2ff. The idea here is that not being able to use these animals would constitute a harm to the agent.

²⁵ A potential problem for O’Keefe’s reading is that the passage in Hermarchus, which he uses to back up his reading, deals with a law and not a moral norm, that is, with agreements of law, which are later, instead of agreement of justice, which are prior. See Alberti 1995: 167 as well as the discussion of her position below. However, it seems to me to be a fair assumption that there are also moral norms whose content resembles the content of the laws and so that the Hermarchus passage supports the point O’Keefe wishes to make.

agreements. Hermarchus, for instance, argues that our primitive ancestors came together and formed agreements in order to fend off wild animals.²⁶ And while Lucretius does not explicitly claim that agreements are directed against third parties, he mentions that the only threat that human beings face prior to forming agreements are wild animals.²⁷ Consequently, like Hermarchus, Lucretius seems to endorse the idea that the harm human beings preempt in agreements is any kind of physical harm, not just the harm that could be committed by the parties forming the agreement. It follows, then, that although potential harm from third parties is not mentioned in the *Principal Doctrines* or elsewhere in Epicurus' own writings, it is best not to unduly restrict the verb 'to be harmed' (Greek: '*blaptesthai*'; Latin: '*laederi*') to the harm caused by other human beings in light of the evidence in Hermarchus and Lucretius; 'to be harmed' could also refer to union and protection against whatever external threats may arise – human or otherwise. In short, then, Epicurean agents will form agreements about things that cause direct harm and things that would cause harm indirectly both by the contracting parties themselves and by third parties.

So far the discussion has centered on physical harm. Yet there is no reason to restrict harm to physical harm when it comes to the Epicurean view. For the Epicureans, the actual physical harm that agents experience is only the first step; a key component of Epicureanism is to alleviate the mental distress that agents experience in regard to potentially being physically harmed. In this context, recall that freedom from mental distress plays a key role in Epicureanism. According to the Epicureans, the highest goal

²⁶ Hermarchus, fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.10.1

²⁷ Lucretius, *On the Nature of Things* V. 988ff.

in life is the pursuit of pleasure (*hēdonē*).²⁸ However, by pleasure, the Epicureans do not primarily mean the sensual pleasures of food, wine, and sex (although the pursuit of some such pleasures is not precluded by their theory), but rather a state that is characterized negatively by the absence of bodily pain and mental distress, *aponia* and *ataraxia*.²⁹ Consequently, the removal of fear is a pillar of Epicurean philosophy, which – in certain ways – can be understood as a predecessor to modern psychotherapy.³⁰

Be this as it may, the discussion of the scope of refraining from harm shows that being safe – in some way – is key in Epicurean agreements, since it helps agents to achieve a state of *aponia* and *ataraxia*. The same idea is also captured by the technical term ‘security’ (*asphaleia*), which figures prominently in Epicurean writings.³¹ Security has a dual purpose in Epicureanism: If agents are secure, they are first protected from potential sources of pain and, second, their fear and mental disturbances connected with

²⁸ See, for instance, *Letter to Menoeceus* X.128.

²⁹ *Ibid.*, 131f. Note the metaphor in this context. ‘*Ataraktos*’ (and modern Greek ‘*ataraxos*’) means ‘calm’ or ‘still’ and is applied to the state of the sea. When one is free from mental distress, one’s mental landscape thus resembles a calm sea, not raging, choppy waters. The Epicurean understanding of pleasure is quite unorthodox and even in antiquity caused much confusion – as the long complaint about Epicurus’ unorthodox usage of the notion of pleasure in Cicero indicates. See *On Ends* II.6ff. Perhaps some of the confusion can be cleared up if one has in mind Epicurean hedonism most often advises that we lead a *pleasant*, not a *pleasurable* life, although again *pleasurable* things are not excluded from the Epicurean point of view if they do not infringe on the goal of leading a pleasant life. On the Epicurean conception of pleasure, see, for instance, Brochard 2009 [1904], Bailey 1964 [1928]: 482ff., Steckel 1960, Diano 1974: 67ff., Gosling and Taylor 1982: 345ff., Hossenfelder 1986, Mitsis 1988: 11ff., Purinton 1993, Cooper 1999, Erler and Schofield 2010 [1999], Nikolsky 2001, Held 2007, Arenson 2009, Wolfsdorf 2009, Woolf 2010 [2009], and Wolfsdorf 2013: 144ff.

³⁰ The focus on this psychotherapy has some strange consequences for Epicurean philosophy, especially for the issue of what will harm a Sage. A Sage will have internalized the precepts of the *Four-Fold Remedy* that pain is easy to endure and that death is nothing to her, which seems to make it difficult to find a scenario, in which a Sage will genuinely experience harm. If death is nothing to the Sage, does killing him really constitute a harm? For discussion of this problem, see Rosenbaum 1987.

³¹ For *asphaleia*, see especially KD 7, 13, and 14. This does not mean that agents have to agree with Epicurean theory in order to form agreements but that Epicureanism broadly construes security and harm, making the theory appealing to all sorts of agents.

suffering pain are alleviated. Security thus complements the program of scientific investigation that serves the purpose of mitigating the threat that natural phenomena pose (including the divine) – as KD 13, for instance, clearly sets out.³²

It would be wrong to think, though, that the Epicureans argue that agreements are the only – or in fact the best – way to achieve security for the Epicureans. Agreements are one of several means to achieve the state of *ataraxia* and *aponia*, and so they need to be understood in the context of these other means to achieve this end. For the Epicureans, the highest form of security is the withdrawal from the dealings with others. By this, they mean the life in a community of friends,³³ which is a life of not being affected by the many.³⁴ Epicurean theory can thus be characterized as devaluing the active life, which earned it its reputation for being apolitical or antipolitical.³⁵ Accordingly,

³² “There is no profit in procuring security in relation to human beings if things above and beneath the earth and indeed all in the boundless [universe] remain matters of suspicion [Οὐθέν ὄφελος ἦν τὴν κατ’ ἀνθρώπους ἀσφάλειαν κατασκευάζεσθαι τῶν ἄνωθεν ὑπόπτων καθεστῶτων καὶ τῶν ὑπὸ γῆς καὶ ἀπλῶς τῶν ἐν τῷ ἀπείρῳ]” (Trans. by Bailey, modified). On security, see also Barrigazzi 1983. Even if it were unauthentic, the *Letter to Pythocles* in this context is a great example of how Epicurean research into natural phenomena contributes to freedom from mental distress by educating agents about the true nature of things.

³³ The withdrawal from the many in the Epicurean school could have played a similar doctrinal function as the theoretical life does in Aristotle. In Aristotle, an agent should try to partake in the life of contemplation as much as possible, but the human condition will prevent her from devoting herself exclusively to the life of contemplation. Desires for basic human needs such as food or drink will compel her to interact with others – which means to lead a practical life. Likewise, in Epicurus an agent should be self-sufficient, which in its highest form means the withdrawal from society, but this withdrawal may not be possible because human nature according to Epicureans makes us depend on others for our well being. In this context, it is also interesting to point out the theological dimension of this idea. The withdrawal from the many (like Aristotle’s advocacy of the life of contemplation) may be Epicurus’ version of the common ancient idea of the imitation of the divine (*hōmōiosis theōi*; see Bignone 1936: I.134f., Schmid 1951: 127ff., Müller 1991: 124, Erler 2002, and Liu 2005).

³⁴ The distinction between the Epicurean community and the rest of humanity is very important in Epicureanism. For ‘*hoi polloi*’ in Epicurean writings, see, for instance, KD 14, and *Letter to Menoeceus* 123 (3 times), 124, 125, and 134.

³⁵ See, for instance, von Arnim 1898: 73, von Arnim 1910: 148f., and Zeller 2013 [1923]: III.1, 486 (470); see also fr. 552 Usener as well as *Vatican Saying* (*Gnomologium Vaticanum* = GV) 58.

the Epicureans claim that even if societal agreements are in place and an agent has the power and personal means to protect herself against others, the life among the many always remains risky. As a result, such a life is worse than the life in the community of friends:

The simplest security is that which comes from a quiet life and withdrawal from the many, although a certain degree of security from other men does come by means of the power to repel [attacks] and by means of prosperity.³⁶

In the same vein, Epicurus famously advises his disciples to “live unnoticed”³⁷ and explicitly claims that the Sage “will not be politically active.”³⁸ This attitude already brought the Epicureans much ridicule in antiquity, culminating in Cicero’s remark at *On the Orator* III.63f. that if all eminent men who had reached the state of *ataraxia* withdrew from public life, they would not be able to remain in this blissful state for a long time.³⁹

However, as more recent scholars argue, this view is too simple.⁴⁰ Epicureans acknowledge that it is not always possible to withdraw from the many and thus to be secure in this way. First, not everyone is a Sage and it would be wrong to reduce the Epicurean theory to be directed only at Sages.⁴¹ Not everyone has the disposition

³⁶ Τῆς ἀσφαλείας τῆς ἐξ ἀνθρώπων γενομένης μέχρι τινὸς δυνάμει τε ἐξερειστικῇ καὶ εὐπορίᾳ, εἰλικρινεστάτη γίγνεται ἢ ἐκ τῆς ἡσυχίας καὶ ἐκχωρήσεως τῶν πολλῶν ἀσφάλεια. KD 14. Trans. by Gerson/Inwood, modified. See also KD 6 and 7. In KD 7, *asphaleia* is even referred to as “the natural good [τὸ τῆς φύσεως ἀγαθόν].”

³⁷ λάθε βιώσας. Fr. 551 Usener.

³⁸ οὐδὲ πολιτεύσεται. Fr. 8 Usener.

³⁹ See also Plutarch, *Against Colotes* 1126e ff.

⁴⁰ See, for instance, Müller 1972: 78ff., Long 1985, and especially Roskam 2007. There is even some evidence that Epicurus himself had some interest in political matters. See Roskam 2007: 50.

⁴¹ In contradistinction to the Stoics who argue either that the figure of the Sage is only a regulatory ideal or that there are only very few people who have achieved the status of being a

necessary to live the life of a Sage. According to the Epicureans, not everyone has the bodily constitution (*sōματος hexis*) or ethnic background (*ethnos*) to become a Sage,⁴² which is a prerequisite for such a life. Likewise, Epicurus explicitly mentions people whose disposition is to lead a political life.⁴³ These people are not to be stopped from following their nature, but rather encouraged to pursue the life that best fits them. For such people, it seems that security from others will be a major concern.⁴⁴ Second, the

Sage, the Epicureans argue that there is a large number of sages in the world. See Delattre 2003. Accordingly, we read in Philodemus that “one must not suppose that all [Sages] are friends of all – at least according to what ‘friends’ are usually called. For it is not possible that the infinite number of them come to know each other [οὐ μὴν ἀπάντα[ς] ἀ[πάν]των οἰητέον εἶναι [φίλ]ους. ἢ κατὰ τὸ σύν[η]θές γε φίλοι καλοῦνται· τοὺς γὰρ[ρ] ἀπείρους [ο]ὔ δυνατὸν ἀλλήλοις εἰς γνῶσιν φικνεῖσθαι].” *On the Gods* III, col. c.1.3ff. Diels. Given that not everyone is capable of being a Sage (see below), I take ‘*apeiron*’ here to mean ‘many’ (so many that not everyone can befriend everyone), but not literally an infinite number.

⁴² See fr. 226 Usener.

⁴³ See fr. 555 Usener; see also Grilli 1996 and the typology of Epicurean forms of life in Liebich 1960: 104ff.

⁴⁴ However, note again that, on the Epicurean view, life in society is only the second best option after the complete withdrawal from the many. Moreover, while fame and power can perhaps lead to security in the moment, they cannot ultimately guarantee a life free from bodily pain and mental distress (Philippson 1910a: 308f. as well Roskam 2007: 37ff. and 56ff.). Indeed, KD 7 only says that some people considered fame and reputation as means of attaining security from others and that *if they were secure*, they had achieved “the natural good” (= security). In other words, KD 7 is a hypothetical statement that leaves open whether fame and power can be used successfully to achieve security. The saying might therefore be understood as a meditation on the possibility of obtaining freedom from mental distress and bodily pain via the accumulation of power and fame and in fact stress that the belief of this possibility is mistaken (see also KD 6). Such a reading is corroborated by the culture story in Lucretius’ *On the Nature of Things* (V.1105ff.). There, the first kings mistakenly believe that erecting monarchies will keep them secure from their fellow human beings, which shows that power alone does not suffice to be free from mental distress and bodily pain. More importantly, though, the pursuit of fame and power as a means of obtaining security is in tension with the Epicurean commitment that human beings should above all cultivate their natural and necessary desires, pursue natural and unnecessary desires only when they bring no harm, and avoid unnatural and unnecessary desires altogether. See the detailed discussion in chapter 5. The desire for fame and the desire for power are prime examples of unnatural and unnecessary desires. Consequently, a prudent Epicurean will not desire fame and power as a means of attaining freedom from mental distress. The same idea is also asserted in GV 81, where wealth and fame are described as uncontrollable; as such, they cannot give the soul *ataraxia*, and so *a fortiori* not *asphaleia*, either: “The disturbance of the soul cannot be ended nor joy be created by the possession of the greatest wealth or by honor and respect by the many or by anything else that is associated with the causes of unlimited desires [Οὐ λύει τὴν τῆς ψυχῆς ταραχὴν οὐδὲ τὴν ἀξιόλογον ἀπογεννᾷ χαρὰν οὔτε πλοῦτος ὑπάρχων ὁ μέγιστος οὔθ’ ἢ παρὰ

circumstances might make it impossible for an agent to live a life withdrawn from the many. In such a case, an Epicurean seems to have no choice but to live with other human beings; political knowledge thus becomes beneficial to her to obtain security via reciprocal agreement.⁴⁵ In other words, while there is a considerable amount of evidence that all things being equal, Epicureans advise that agents should not be implicated in political matters,⁴⁶ political theorizing fulfills an important function in Epicurean theory. It helps agents attain security, which in turn helps achieve the Epicurean goal of living a life of *aponia* and *ataraxia*.⁴⁷

So far, I have argued that contractual justice is important because agreements are a component of the ways that agents achieve security, which in turn promotes *aponia* and *ataraxia*. This completes the first step of my argument and I now turn to the complication I already signaled above: KD 31 connects the just with the beneficial. Accordingly, one could say on a first reading that agreements in Epicureanism are beneficial to agents insofar as they help them in obtaining *ataraxia*.⁴⁸ But are

τοῖς πολλοῖς τιμὴ καὶ περίβλεψις οὐτ' ἄλλο τι τῶν παρὰ τὰς ἀδιορίστους αἰτίας].” Trans. by Bailey, modified. On the relationship between security and *ataraxia*, see Cicero, *On Ends* I.34f. and 52f.

⁴⁵ In the same vein, KD 39 advises Epicurean agents on how to deal with things depending on whether they can be influenced by them or whether they are beyond their sphere of influence. See Müller 1972: 117f. Finally, note that even if the withdrawal from the many is possible, this does not mean that Epicurean agents capable of withdrawing will live the life of hermits, completely isolated from others. As Asmis emphasizes, the imperative '*lathē biōsas*' does not mean to live in a physically concealed way, that is, in hiding, but rather to blend in with the society and so to adopt a certain inner attitude (2001: 214).

⁴⁶ See especially the examples in Fowler 1989: 122ff.

⁴⁷ To show that political theorizing played some role in Epicureanism, finally, add a numerical argument: Eight of the forty *Principal Doctrines* deal explicitly with justice and the law. If thinking about justice and law, that is, the political realm, were completely unimportant to the Epicureans, it would be very surprising that one in five or 20% of the most important maxims were devoted to it.

⁴⁸ Since benefit could refer to the benefit of any given individual or to the benefit of the community as a whole, a common objection against Epicurean theory is that one can easily imagine

agreements really about what is beneficial without qualification? The set of things that are beneficial is larger than the set of things that are covered by an agreement in which agents pledge to refrain from harming as what contributes to an agent's security; in other words, while there is one kind of benefit in regard to the dealings with other beings and that may be summed up by the term 'security,' there may be more farther reaching 'benefits' that are not cases of justice. For instance, one may think of an agent wanting to receive help from others when in need of such help. This is an instance of something beneficial in regard to the dealings with other beings. However, it is unclear whether Epicurean *agreements*, in the way I have discussed them so far, entail positive obligations (that is, the duty to do something) beyond the negative obligations that agents pledge to follow (that is, the duties to abstain from harm).

Since the *Principal Doctrines* are silent on positive obligations, let us turn to some later Epicurean texts. In Hermarchus, one reads that the first law-givers "tried to

scenarios, in which it may be beneficial for an agent to form a certain agreement that will guarantee her personal *aponia* and *ataraxia* while being at odds with the *aponia* and *ataraxia* of others. For example, the usurpation of political power may be 'beneficial' to the tyrant, but only at the expense of her subjects. Put differently: If the perspective on benefit Epicurean agents should have is that of an individual, then it needs to be explained how such a perspective leads to any consensus about what is beneficial to the community as a whole. If, by contrast, the perspective on benefit Epicurean agents should have is that of the community, then it needs to be explained how something that is *prima facie* clearly not beneficial to an individual – like enduring something painful on behalf of the community – is beneficial to her after all. In short, the Epicureans need to explain how the individual and community perspective on benefit can cohere, especially when they also invoke the notion of a common good in their account (see chapter 3). Answering this objection is no easy task; indeed, it is one of the contested areas in the scholarship on Epicurean friendship. See especially Mitsis 1988, O'Connor 1989, Annas 1993a, O'Keefe 2001b, Brown 2002, and Evans 2004. A detailed discussion of this problem would exceed the scope of the current investigation and so I can only sketch a possible solution. The Epicurean claim that what is beneficial for society or for the group aligns with what is beneficial for the individuals becomes somewhat more plausible if one realizes that Epicurean theory, unlike modern hedonist theories, assumes that the scenario of several agents simultaneously achieving the state of *aponia* and *ataraxia* is possible and realistic. Furthermore, the resources needed to reach this state are, in fact, for the Epicureans so abundant that there will not be conflicts among agents. Therefore, one may say that no real conflict between the goal of an individual and the goal of the community as a whole (if these goals are properly understood) exists in Epicurean theory, and something that is beneficial is beneficial for both an individual and for the community as a whole.

restrain firmly those who readily destroyed each other and who weakened the [mutual] aid [*boētheian*] because of forgetfulness of past events.”⁴⁹ One may be tempted to think that this means that agreements also confer positive obligations on agents – if not in all regards, then, at least insofar as they promote security. However, it is not quite clear what precisely ‘aid’ entails: The passage may merely imply that the negative obligations in Epicurean agreements were understood as also providing certain outcomes that aid agents, that is, that agreements created a community, in which all aided each other in the sense of restraining those who tried to harm them.⁵⁰ However, on a stronger reading, the passage is evidence that even in early Epicureanism, there are more positive obligations towards others that arose out of Epicurean contracts – obligations that are not explicitly discussed in the *Principal Doctrines*.

Ultimately, I think the evidence in Hermarchus is too slim to argue for the conclusion that even in early Epicureanism, agreements also entail positive obligations on the part of the contracting parties to help others. However, a formulation like the one in Hermarchus could explain why Lucretius writes that it is just (*aequum*) for agreeing parties to pity the weak:

It was then, too, that neighbors began eagerly to form agreements [*amicitiem*] one with another, not to hurt or to be harmed, and claimed protection for their children and womenfolk, indicating by means of inarticulate cries and gestures that it is fair or just [*aequum*] that the weak are pitied by everyone.⁵¹

⁴⁹ ἐπειράθησαν βεβαιωτέρως ἀνείρξαι τοὺς προχείρως φθείροντας ἀλλήλους καὶ τὴν βοήθειαν ἀσθενεστέραν κατασκευάζοντας διὰ τὴν τοῦ παρεληλυθότος λήθην. Hermarchus, fr. 34 Longo Auricchio = *On Abstinence* I.11.1. Trans. mine.

⁵⁰ According to such a reading, then, Hermarchus’ account is compatible with Lucretius’ in regard to its treatment of the free rider problem. See *On the Nature of Things* V.1025ff. as well as the more detailed discussion in chapter 3.

⁵¹ *tunc et amicitiam coeperunt iungere aventes / finitimi inter se nec laedere nec violari, / et pueros commendarunt muliebrequae saeculum, / vocibus et gestu cum balbe significarent / imbecillorum esse aequum misererier omnis*. V.1019ff.; Trans. by Smith, modified.

Again, 'pitying the weak' could merely be Lucretius' way of expressing that agreements not only concern contracting parties themselves, but may also include others. On this reading, Epicurean agreements are not merely non-aggression pacts between the contracting parties themselves, but they also include provisions regulating indirect harms, as was discussed above. It seems difficult to reconcile a merely negative obligation with 'pitying,' though, which seems to include a positive obligation to help others. We will have an opportunity to revisit this problem in more detail in chapter 3, where I discuss this passage with regard to the terminology used, which is reminiscent of the Stoic doctrine of *oikeiōsis*. In any case, how the originally negative obligation to refrain from harm, which is found in the *Principal Doctrines*, is related to positive obligations to help others (without a modification of Epicurean theory) is not explained in Lucretius.

2.2. Benefit, Justice, and Law

In the previous section, I discussed the relationship between harm, security, and benefit in Epicureanism and I argued that the mutual agreements over not harming and not being harmed are beneficial to obtaining *aponia* and *ataraxia*. However, I did not comment on how these agreements relate to justice. After all, KD 32 and 33 (and possibly also 31) claim that *justice* is an agreement over not harming and not being harmed. What does this mean?

Let us begin with the relationship between the just and the beneficial. The Epicureans seem to think that there are certain things or actions that are beneficial and that this benefit is an objective fact about the world. Unfortunately, the textual evidence for such a claim is rather slim. However, benefit itself is never discussed in terms of an

agreement. In other words, agents unite to *agree* on what is beneficial. And indeed, the view that benefit is an agreement would have rather strange consequences. Imagine, for instance, that human beings agreed that it would be beneficial to their health to eat three chocolate bars everyday or that they would agree that brushing one's teeth is a waste of time and that dental health can be obtained without it. Surely, such acts would not *make* eating chocolate or brushing one's teeth beneficial towards achieving the end of health. They would merely ignore what we know about dieting and what is conducive to obtaining health, which is an objective fact of the matter. Of course, our state of knowledge may progress and we may find out that a certain thing or action is not beneficial to obtaining health after all. In this vein, we may find out that certain actions do not have the benefit that they were believed to have. For instance, therapeutic phlebotomy has largely been abandoned in modern medicine, because it is now believed to cause more harm than benefit in patients. Again, though, this was not a matter of agreement among human beings, but rather a finding, a scientific fact about what is beneficial in which circumstances and what is not.

Now, I already suggested above that 'not harming and not being harmed' is a kind of benefit for the Epicureans. In particular, I argued that 'not harming and not being harmed' was a shorthand for security, which in turn was a shorthand for benefit insofar as it relates to the interpersonal dealings of human beings with each other. If one connects this previous discussion with the idea that I just presented, namely, that benefit is an objective fact about the world, it follows that on the Epicurean view, what harm is and is not is an objective fact about the world. In a certain sense, then, the Epicurean conception of justice is very firmly rooted in objective facts about the world.

However, this is only one part of the Epicurean conception. The Epicureans also claim that justice is an agreement. I take this to mean that there is a constructivist element to Epicurean justice. Justice, on this view, is not what is beneficial without qualification, but only what is beneficial *and* has been agreed upon and so has received the ‘rank’ of being just.⁵² In other words, the set of things and actions that are beneficial is larger than the set of things and actions that are just; there are things that are beneficial independent of and prior to the agreements, but there is no justice outside the agreements on the Epicurean view. Take the following example: Under the condition that it is beneficial not to steal because refraining from such behavior promotes the agents’ *ataraxia* and *aponia*,⁵³ only agreements that promote that agents refrain from stealing will be agreed on and be just. This means that different societies may reach different conclusions in regard to stealing and hence what is beneficial in that society. For instance, it could be seen as beneficial that chopping off a thief’s hand is an appropriate punishment in some societies, while a fine or a prison sentence may be considered appropriate in others. Yet regardless of the differences between societies, only things that promote security and hence *ataraxia* and *aponia* will ever be candidates to be recognized as just. For instance, it will never be just to steal, on the Epicurean view,

⁵² See “*chōra*” in KD 37.

⁵³ One can imagine several ways in which caring for the weak furthers *aponia* and *ataraxia* and the following ways are by no means exhaustive: If an agent’s dependents are taken care of, this will help an agent to stop worrying about them and thus contribute to his *ataraxia*. Furthermore, if the weak are taken care of (and hence also achieve a state of *ataraxia*), agents do not have to fear physical harm (and hence to be insecure) and be mentally disturbed that the weak will organize and plot against them.

precisely because it is hard to imagine a scenario, in which stealing will promote *ataraxia* and *aponia*.⁵⁴

So far, I have focused on justice and spoken about ‘agreements’ without distinguishing that there are two kinds thereof in Epicurean theory.⁵⁵ The agreements I discussed up to this point, for the most part, are best understood as an act of reaching a mutual understanding about what is beneficial in certain circumstances (although again what is beneficial is not ‘constructed’ through the agreement, but an objective fact about the world). These agreements can be said to establish moral norms, that is, the rules that regulate our interactions with others in a community. They are the ‘social glue’ that allows society to form successfully, that is, they enable human beings to abandon their originary isolated existence.⁵⁶

However, there is also a second kind of agreement and hence of contractual justice for the Epicureans that is logically and temporally posterior to the first kind. This type is not explicitly found in Epicurus’ own works, but the main reason for this may simply be that the key sections of Epicurus’ *On Nature*, which could have discussed this second type of agreement, are lost. These agreements of the second type lead to the creation of laws, on the basis of certain moral norms (that – at least in the ideal case – in turn came to be via the Epicurean agreements of the first kind). In other words, then, the Epicureans argue that the agreements play a double role: One kind of agreement helps to create moral norms such as justice, while other kinds of agreements help establish

⁵⁴ First, if no one steals, agents will not be harmed by losing their possessions. Second, agents will also not have to fear the loss of their possessions.

⁵⁵ However, I have signaled this distinction above and made reference to it in footnotes.

⁵⁶ Again, see the more detailed discussion in the subsequent chapter.

the laws. For the Epicureans, both agreements promote *ataraxia* and *aponia* by guaranteeing security and hence appealing to what is by nature beneficial, in a way that is to be spelled out in more detail below.

These two types of agreement are different in two ways. First, the mode of agreement is different in each case, and second, there are sanction mechanisms in place to punish the infringements of laws, while there are no or – at least no reliable – sanction mechanisms in place for infringements of moral norms. On the Epicurean view, the laws thus remedy the biggest defect of the moral norms: That agreements establishing moral norms are kept most but not all of the time.⁵⁷

According to Lucretius, laws are not made via *reciprocal agreements*, that is, in the same way that the agreements that lead to justice were formed, but they are made by a few preeminent men who set down the laws. This happens after failed attempts to establish kingships and the bloodshed that ensued from it.⁵⁸ One might thus be tempted to think that it is quite odd to speak of ‘agreements’ when it comes to the laws. After all, the majority of the population is shut out from the law-giving process and an ‘agreement’ that is made solely among the law-givers only seems like a cold comfort. Furthermore, Lucretius does not even use the word ‘*foedus*’ at this point in the text and there is no other Epicurean text that explicitly refers to the laws as agreements.

Nevertheless, I think that the laws also resemble kinds of agreements in Epicurean theory. That a few eminent individuals give the laws does not entail that these individuals have license to set down laws as they wish. The act of law-giving act also

⁵⁷ Lucretius, *On the Nature of Things*, V.1024ff.

⁵⁸ *Ibid.*, V.1105ff.

crutially involves the many. Indeed, very first kings who pursue what is beneficial to them rather than what is beneficial for society as a whole lose sight of the common good.⁵⁹ They are egoistic. The result of this is an unstable political order. Therefore, whatever laws are now made and whatever political measures are now taken must – as a consequence of the failed kingships – cohere with the ‘will of the people’, that is, with what is beneficial for all. And this is also the reason why Lucretius emphasizes that although not everyone makes the laws, everyone in society decides to obey the laws of their own will (*sponte sua*), giving the laws legitimacy.⁶⁰ This is important because it means that although the process of making laws is not collaborative like the process of determining moral norms is, it entails an element of collaboration in according a role to the many. As a result, the process of law-making can also be said to constitute a kind of agreement between the law-givers and those who agree to the law. In other words, the process of law-giving from the Epicurean view involves an element of choice on the part of all citizens: Law-giving is not construed as a simple top-down process but as a kind of agreement between the law-givers and the subjects, with the emphasis on the part of subjects lying on the instrumental reasons they have to obey the laws rather than on the idea of consent, which is characteristic of early modern theories of the social contract.

This brings us to the second difference between the agreements of justice and the agreements of law: sanction mechanisms that punish the infringements.⁶¹ As I

⁵⁹ They build citadels to protect themselves, not the general public. *Ibid.*, V.1109.

⁶⁰ *Ibid.*, V.1147. Hermarchus also reports that the first law-givers did not have to use force to establish the laws but that the people who subjected themselves to them acquiesced (*sunchorēsantōn*) by themselves. Fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.8.1. See also the comments in Armstrong 1997 and O’Keefe 2001 (which I discuss in more detail in chapter 5).

⁶¹ Lucretius, *On the Nature of Things* V. 1151ff.

already signaled above, the main drawback of the agreements of justice is that there are no sanction mechanisms in place if agreements are not met. This drawback is remedied by the agreements of law, which minimize the problem of free riding because agents now start to fear the violation of the (just) law. However, this also means that there is now a central coercive power that is primarily obeyed out of fear, like in Hobbes. By contrast, fear plays no significant role in the formation of the agreements that lead to moral norms; in fact, as I argue in more detail in chapter 3, fear is, for the Epicureans, above all a deplorable by-product of the life in (non-ideal) communities. And so, although the Epicureans defend a kind of social contract theory, it is clear from these comments that the Epicureans cannot unabashedly endorse agreements that lead to laws as unequivocally good.

2.3. Who is Able to Form Agreements?

After discussing Epicurean agreements in regard to harm, security, and benefit, and showing how the Epicureans distinguish between two different kinds of agreement, let us now turn to the question of who forms agreements in Epicureanism. This question is important because, in the Epicurean theory of justice, the ability of forming agreements is understood as the prerequisite for articulating one's own point of view: Without the ability to form agreements, an agent will simply have to accept the determinations that other agents make in regard to what is just.⁶² By examining the

⁶² One may think that this focus on the ability to form agreements in connection with justice is odd in Epicureanism. However, in focusing on agreements the Epicureans are in good company; their theory is similar to Rawls' in this respect (see Sorabji 1993: 165 for further references). Rawls' approach has also been criticized for not being able to account for those beyond the frontiers of justice, for instance, members of other species. According to Rawls, human beings are to decide what principles of society are just according to a thought experiment. Ideal reasoners are behind a "veil of ignorance," that is, they abstract from the particularities and socially contingent factors of their respective existences, and then decide on principles of justice that they could rationally and reasonably agree to. These principles are first that all people have the same claim to basic rights

relevant texts, I will argue in what follows that the Epicurean theory can accommodate the interests of traditionally marginalized groups such as foreigners, women, children, and animals, even though members of these groups are never explicitly acknowledged to be able to form agreements.⁶³ First, there is some evidence that members of these groups can at least form certain kinds of understandings, but these are not agreements in the sense that I have laid out above. I argue that these understandings have some value, though. Second, even if Epicurean contracting parties are motivated to secure their own interest in agreements, (A) these interests may include the interests of above groups and (B) Epicurean agents at least ideally have no reason to harm others who are not a threat, even if they do not form an agreement with them.

Let us begin our discussion with KD 32:

Nothing is just or unjust in relation to however many of those animals not able [*mē edunato*] to form agreements over not harming and not being harmed; so too with however many of the peoples [*ethnōn*] unable or unwilling [*mē edunato ē mē ebouleto*] to form agreements over not harming and not being harmed.⁶⁴

and second that economic inequalities are only acceptable if they are construed in such a way that the worst-off members are benefitted in the most effective way. However, whether this accounts for non-human beings as well is a difficult point. After all, while ideal reasoners abstract from the particularities of their existence, they still know some basic facts behind the veil of ignorance, not only about the domains of politics, history, psychology, and economy, but also about themselves; they know, for instance, that they are human beings. Given that the ideal reasoners are by stipulation self-interested, the challenge for Rawlsian contract theory, just as for the Epicurean theory, is to show that this focus on the self-interest of the ideal reasoners is sufficient to care for animal welfare.

⁶³ Epicurus' school was open to women and is universally acknowledged to have been more favorable towards women than other schools. See, for instance, Erler 1994: 287f. and Gordon 2012: 72ff. Whether this includes the ability to form agreements is another matter. On the role of women and other members of the Greek and Roman household as well as their legal relationship to men, see, for instance, Pomeroy 1975, Reinsberg 1989, and Dixon 1992.

⁶⁴ Ὅσα τῶν ζώων μὴ ἐδύνατο συνθήκας ποιεῖσθαι τὰς ὑπὲρ τοῦ μὴ βλάπτειν ἄλληλα μὴδὲ βλάπτεσθαι, πρὸς ταῦτα οὐθὲν ἦν δίκαιον οὐδὲ ἀδίκον· ὡσαύτως δὲ καὶ τῶν ἐθνῶν ὅσα μὴ ἐδύνατο ἢ μὴ ἐβούλετο τὰς συνθήκας ποιεῖσθαι τὰς ὑπὲρ τοῦ μὴ βλάπτειν μὴδὲ βλάπτεσθαι. LS 22A; Trans. by Long and Sedley, modified. On the dialectic context of the maxim, see especially Bignone 1936: II.272ff. as well as Moraux 1957: 100ff.

In this maxim, Epicurus distinguishes between agreements with animals and agreements with other peoples. What is striking about the passage is that he does not directly rule out either. “However many of” could stand in for some, all, or perhaps even an empty set. In regard to animals, the key question to investigate is thus whether for the Epicureans, they are capable of forming agreements.⁶⁵ In regard to other peoples, it is noteworthy that ‘*ethnos*’ is a broad term and may thus include not only non-Greeks but also Greeks who are disposed in such a way that they cannot form agreements. The key question in regard to these peoples is therefore whether the Epicureans think that some people are in general incapable or unable to form agreements.

I will begin my discussion with the possibility of interspecies agreements (2.3.1.). I will then turn to the possibility of interethnic agreements (2.3.2.). Finally, I will end this

⁶⁵ There is disagreement on how to understand and hence translate ‘*pros*’ in KD 32. See the discussion in Perelli 1967: 180, fn. 1 and Goldschmidt 1977: 44ff. On a first reading, it can mean that there is no justice *in regard to* animals that cannot form agreements, as in the translation quoted above. On a second reading, it can also mean that there is no justice *among* these animals, namely, those cannot form agreements. On this reading, the text merely says that there is no justice within a given species, but it leaves open whether human beings are obliged to be just in regard to this species. For instance, on the condition that wolves cannot form agreements with each other, one might say the following: while there is no justice *among* wolves and indeed human beings cannot form agreement with wolves, human beings might still be required to be just *in regard to* wolves. This second reading (that there is no justice *among* wolves), however, seems less convincing than the first (that there is no justice *in regard to* wolves). The context of the maxim, that is, observations on justice, makes it unlikely that Epicurus is merely making the ethnological observation that there are some species (and peoples) that lack justice when it comes to other members of their species. The more interesting observation is about how we should act in regard to other species (and in the second part of the maxim: in regard to foreigners). Furthermore, if there is no justice *among* members of a certain species, it also seems odd to suppose that there is at the same time justice between the members of this species and the members of another species. Again, on the assumption that wolves cannot form agreements with each other, it would be odd to assume that there is no justice *among* wolves, but that there is justice *among* a wolf and a human being in the sense that wolves can form agreements with humans. Definitely more argument for such a view would be needed. In other words, the reading that there is no justice in regard to those animals that cannot form agreements seems to be the preferable reading of KD 32.

section with some observations on intersexual and intergenerational agreements (2.3.3.).

2.3.1. Interspecies Agreements

If the Epicureans allowed interspecies agreements, this would have some interesting consequences from a modern perspective. It would imply that the Epicureans truly extend justice to animals and that on their view, human beings would have ‘contractual obligations’ towards them, which could be seen as an important step on the way of arguing for the interests of animals and so perhaps even their ‘rights.’⁶⁶ I will argue in what follows that the textual evidence suggests that animals cannot form agreements on the Epicurean view, although some passages in Lucretius suggest that there are ‘understandings’ between human beings and animals, which at least in some way resemble the agreements that lead to the existence of justice. However, I will argue that the passage in Lucretius reflects a change in the Epicurean position over time rather than in Epicurus’ teachings.

In KD 32, Epicurus leaves open whether there may be a group of animals that is able to form agreements. To decide this issue, one therefore needs to first examine whether animals on the Epicurean view have the cognitive capacities to form agreements. After all, only if they are *capable* of forming agreements, that is, if they have the requisite capacities to form agreements, is it possible that they are also *able* to form agreements, that is, they are in circumstances that enable them to form agreements. Let us turn to the Epicurean description of animal psychology. In looking at what the

⁶⁶ For a contemporary attempt to use the idea of contracts to argue for animal rights, see Narveson 1977 (see also the reply in Reagan 1977). For the ancient debate, see especially the discussion in Sorabji 1993: 153ff. On the usage of the term ‘rights’ in an ancient context, see Miller 1995: 87ff.

Epicureans think about cognitive capacities of animals and humans, we will see that the Epicureans have quite a nuanced appreciation of animals,⁶⁷ especially compared to other schools of the time.⁶⁸ Furthermore, there is some debate among Epicurean authors on what exactly animals can do. Nevertheless, I will argue in what follows that Epicurean animal psychology makes it likely that animals were not able to form agreements, even if there is some evidence in Lucretius that human beings and animals can form understandings that share some of the features of contractual justice.

Let us begin with Epicurus himself. In *On Nature* XXV,⁶⁹ a notoriously cryptic text that is not only lacunose but also contains much unexplained technical vocabulary, we read:

We sometimes reproach it [that is, an animal capable of having ‘developments’] all the more, but in an admonitory mode – and not in the way in which we exonerate those animals which are wild by combining their developments and their make-up alike into a single thing, and indeed do not use either the admonitory and reformatory mode or the simply retaliatory mode.⁷⁰

⁶⁷ See Annas 1992: 134ff. and Annas 1993b: 67ff.

⁶⁸ See Sorabji 1993: 116ff. and Dierauer 1977.

⁶⁹ The passage is still listed under “*Deperditorum librorum reliquae*” in Arrighetti, but Laursen identified the text as belonging to *On Nature* XXV. While I quote Long and Sedley’s translation in what follows, the critical edition of the text that has been provided by Laursen is invaluable, since it also includes a detailed commentary on the text. For a more recent reading of this difficult text, see Masi 2006.

⁷⁰ ἔτι μᾶλλον ἐνίοτ[ε κ]ακίζομεν, ἐν νοουθετητ[ικῶ]ι μέντοι μᾶλλον τρόπῳ[ι], καὶ οὐκ ὥσπερ [τ]ὰ ἄγρια τῶν ζώων [καθ]αίρομεν μὲν ὁμοίως αὐτὰ τὰ ἀπογεγε[νν]ημένα [κ]αὶ τῇ[ν] σύστασιν εἰς ἓν τι συμπ[λέ]κοντες, οὐ μὴν ο[ὔ]τε τῷ νουθε[τ]ητ[ικῶ]ι τρόπῳ καὶ ἐπανορθωτικῷ οὔτε τῷ ἀπλῶς ἀ[ντι]ποι[η]τικῷ χρώμεθα. LS 20j = fr. 34.25 Arrighetti; Trans. by Long and Sedley, modified; on this passage, see especially Huby 1967, Laursen 1988, and Verlinsky 1996. Laursen translates: ‘We occasionally criticize even more – that is, not in the primary blaming way and not as wild animals do, we rinse, in that we plait together the products themselves and the composition.’ Arrighetti, in turn, translates: “Per di più talora gli muoviamo delle accuse: sotto forma di rimproveri, e invero, secondo una certa misura; e non come per le bestie selvagge, quando facciamo una cosa sola dei moti psichici e della constitutione atomica scusiamo ugualmente sia l’una che gli altri. Non usiamo certo né del sistema di rimproverare né di correggere e nemmeno di esser troppo severi...” Note that the gamma in ‘*agria*’ is no longer legible in the original papyri and one of the two 19th century facsimile has *aeria tōn zōiōn* (air animals). Furthermore, Long and

While many details of this passage are unclear,⁷¹ Epicurus here seems to claim that wild animals are in some way significantly different from non-wild animals. It could

Sedley translate ‘*sumpleō*’ as “conflate,” but this suggests a deliberate confusion on the part of those who ‘weave together’ constitution and developments, which need not be the case. Citing Aristotle’s *On the Soul* 428a25 and *Parts of Animals* 643b16, the LSJ lists the specific meaning of *sumplokē* as the “combination of mental acts so as to form one entity,” which is intended here; Epicurus also uses the term in this way at *Letter to Herodotus* 72 and 73. Better is Laursen’s translation “plait together,” which may signal a deliberate or non-deliberate act.

⁷¹ A key notion needed to make sense of the passage is the idea of a ‘development’ (*apogegennēmenon*). According to one reading of the passage, the difference between wild and non-wild animals lies in the relationship between what Epicurus calls the ‘developments’ and the make-up or constitution (*sustasis*). What Epicurus means by ‘*apogegennēmena*’ is not very clear, yet these seem to decide whether an animal is worthy of praise or blame. Unfortunately, the technical term ‘*apogegennēmenon*’ is not defined anywhere and the best explanation is perhaps found in the following passage: “So when something develops which takes on some distinctness from the atoms in a differential way – not in the way which is like viewing from a different distance – it acquires responsibility which proceeds from itself [οὕτως ἐπειδὴν ἀπογεννηθῇ τι λαμβάνον [τι]νὰ [ἐ]τερότη[τα τῶν] ἀτόμων κατὰ τινα πρόπον διαληπτικόν, οὐ τὸν ὡς ἀφ’ ἐτέρου ὀ[ι]αστήματος, ἰσχύει[ν] τὴν ἐξ ἑαυ[τοῦ] αἰτίαν].” LS 20B = fr. 34.22 Arrighetti; Trans. by Long and Sedley, modified; see also the discussion in Masi 2005. Without context, it is difficult to make sense of what this exactly means. However, it could mean that an entity may consist of the atoms that make it up – also referred to as the constitution (*sustasis*) – and something that is acquired in the course of time that is distinct from the atomic make up, the *apogegennēmena*. *Apogegennēmenon* is the perfect participle of *apogenaō*, which means ‘to beget’ or ‘to produce.’ The *apogegennēmena* are hence the “developments” that come to be over time and that are distinct from the atomic constitution of an entity. Unfortunately, how and by what process the *apogegennēmena* are different from the atomic constitution is quite mysterious. The analogy to seeing an object from two different distances that is offered later in the text is puzzling rather than illuminating (see also Laursen 1988: 12f.). In any event, the point that is above all important here is that Epicurus (somehow) argues that there are developments distinctive from the atomic constitution and that this prevents that any entity, insofar as it has developments, can be reduced to its atomic constitution. What is important in this context is the function of the developments: The text claims that the developments (as opposed to the atomic constitution itself) are key when it comes to evaluating ‘responsibility’: “But many naturally capable of achieving these and those results fail to achieve them, because of themselves, not because of one and the same responsibility [*aitian*] of the atoms and of themselves. And with these we especially do battle, and rebuke them, <hat>ing [them] for a disposition which follows their disordered congenital nature as in the case of all animals. For the nature of their atoms has contributed nothing to some of their behavior, and degrees of behavior and character, but it is their developments which themselves possess all or most of the responsibility for certain things. It is as a result of that nature that some of their atoms move with disordered motions, but it is not on the atoms that... [Πολλὰ δὲ καὶ τῶνδε καὶ τῶνδε φύσιν ἔχοντα ἀπεγραστικά [γί]νεσθαι δι’ ἑαυτὰ οὐ γίγνεται ἀπ[ε]ργαστικά, οὐ διὰ τὴν αὐτὴν αἰτία[ν] τῶν τε ἀτόμων καὶ ἑαυτῶν· οἷς δὴ καὶ μάλιστα μαχόμεθα καὶ ἐπιτιμῶμεν, μ[ι]σοῦντες κατὰ τὴν ἐξ ἀρχῆ[ς] παραχῶδη φύσιν ἔχοντα καθ[ά]περ ἐπὶ τῶν πάντων ζώων. Οὐθὲν γὰρ αὐτοῖς συνήργηκεν εἰς ἓνα ἔργα τε καὶ μεγέθη ἔργων καὶ διαθέσεων ἢ τῶν ἀτόμων φύσις, ἀλλ’ αὐτὰ τὰ ἀπογεννημένα τὴν πᾶσα[ν] ἢ τὴν πλε[ισ]τὴν κέ[κ]τηται αἰτίαν τῶνδε [τι]νων. ἐκ δ’ ἐκ[ε]ίνης [ἐν]ιαί τῶν [ἀ]τόμων κινήσεις παραχῶδε[ις] κί[ν]ο[ν]ται, οὐχὶ δὲ τὰς ἀτ[όμου]ς...” LS 20B = fr. 34.21 Arrighetti; Trans. by Long and Sedley, modified. There are some textual problems here. First, *polla* at the beginning of the passage just quoted may refer to *zoa*, as Long and

follow from this that the Epicureans distinguish between wild animals and tame or domestic ones and that this difference overlaps with the distinction between those animals that are able to form agreements and those who are not. However, deducing any firm conclusion from this passage seems problematic, given the state of the text and a lack of context. Let us therefore turn to a different and perhaps more conclusive piece of evidence to address the cognitive capabilities of animals in Epicureanism.

In *On Irrational Contempt for Common Conceptions*, Polystratus, the third head of the Garden, who is perhaps one of the last Epicureans to have studied with the school founder himself (which would make doctrinal continuity between his views and Epicurus' own views more likely) explicitly discusses the cognitive capacities of animals. Unfortunately, much of Polystratus' argument is lost due to the poor condition of the papyrus scroll it was preserved on, and the passages that are relevant in this context are too dispersed to quote in full. Nevertheless, in his treatise, Polystratus is concerned with demonstrating that human beings and animals crucially differ in regard to reason (*logismos*). Animals, Polystratus claims, "do not share in reason *or not in one like*

Sedley suggest, but this has been challenged by Laursen who argues that this does not fit the lacuna preceding the text and that it should rather be the developments themselves that are the subject of the sentence (1988: 10; see also Annas 1992: 131, fn. 25). Second, the root of the present participle in the second sentence is not preserved in the manuscript. 'Hating' is Long and Sedley's interpolation. Be this as it may, the key Greek term in the above passage is '*aitia*', which is most commonly translated as 'cause' (which bears the problem that the modern understanding of causality is different than that of the ancients). The idea is that only action that is produced by the developments can be praiseworthy or blameworthy action. This means that animals cannot be held accountable for their atomic make-up, either. For instance, we cannot blame a cat for scratching the new couch if this scratching is necessitated by her atomic make-up. What is interesting, then, is that the text acknowledges that developments may also take place in animals and that these developments are the cause of blame. Unfortunately, Epicurus does not offer us any more detail here as to which behavior in animals is part of their atomic constitution and which is not, which would be the first step in developing a classification of animals.

ours.”⁷² Polystratus does not outright deny reason to animals, but he insists that there are certain cognitive operations that animals cannot perform and that these distinguish animals from human beings. More explicitly, Polystratus names the following, related differences:⁷³ he points out that animals are not able to remember past events⁷⁴ and he even denies that animals are able learn; animals on his view only live in the present.⁷⁵ Furthermore, he explicitly claims that animals do not have the ability to grasp the beautiful and shameful and other such things or to understand signs (*sēmeia*), omens (*oiōnoi*), and tidings (*klēdones*).⁷⁶ On this view, animals take in sensory information, but that they are not able to process this information as human beings are. To make this point, Polystratus uses several verbs that stress understanding and comprehension,⁷⁷ claiming that this ‘understanding’ is unique to human beings; it distinguishes human beings from animals.

The ability to form agreements is not explicitly discussed in the text. However, it seems that it could be added to the list. After all, the description of the cognitive capacities of animals in Polystratus is enough to indict animals. Without memory, the ability to learn, and a grasp of things that are beneficial,⁷⁸ animals are unlikely to be able

⁷² τὸ μὴ κοινωνεῖν λογισμοῦ ἢ μ[ὴ οἶ]ου ἡμεῖς. *On Irrational Contempt*, col. VII.5ff. Indelli; emphasis added.

⁷³ See also Haussleiter 1935: 286f.

⁷⁴ [οὔτε τὰ παρελθόντα μνη[μ]ονε[ύειν]. Col. IV.1f. Admittedly, the text is here very uncertain.

⁷⁵ Col. IV.2f.

⁷⁶ Col. VII.1ff.

⁷⁷ See *sunoraō* at col. I.2 and VII.4f. and *eulabeomai* at col. III.4f.

⁷⁸ This does not mean that an animal (or in fact anyone) has to have fully formed views about justice in the sense of a fully articulated theory in order to form agreements. It only means that whoever forms agreements needs to have some beliefs about what is beneficial, so that the coordination with others (the agreeing) about what is just is possible.

to form agreements. Given how animals were described, any other conclusion would be very odd.

This overall impression is confirmed in Hermarchus, Epicurus' immediate successor as head of the Garden. His view of animals on the whole is less nuanced than that of Polystratus:

Now if people had been able [*edunato*] to make a kind of agreement with the remaining animals [*ta loipa tōn zōōn*], as with human beings, over not killing and not being killed indiscriminately by us, it would have been fine to push justice up to this point; for it would tend to security. But since it was impossible [*tōn amēchanōn ēn*] to associate with law creatures that lack reason, it was not possible [*ouk hoion te*] to use such an instrument as the means of providing for utility in our security from other living beings any more than from lifeless things. That is why the only way to achieve such security as possible is to take the licence which we now have to kill them.⁷⁹

According to Hermarchus, agreements with animals would be desirable because they extend security for human beings to the animal kingdom: Natural threats would

⁷⁹ Εἰ μὲν οὖν ἡδύναντο ποιήσασθαι τινα συνθήκην ὥσπερ πρὸς ἀνθρώπους οὕτω καὶ πρὸς τὰ λοιπὰ τῶν ζῶων ὑπὲρ τοῦ μὴ κτείνειν μηδὲ πρὸς ἡμῶν ἀκρίτως αὐτὰ κτείνεσθαι, καλῶς εἶχε μέχρι τούτου τὸ δίκαιον ἐξάγειν· ἐπιτεταμένον γὰρ ἐγίγνετο πρὸς τὴν ἀσφάλειαν. Ἐπειδὴ δὲ τῶν ἀμηχάνων ἦν κοινωνῆσαι νόμου τὰ μὴ δεχόμενα τῶν ζῶων λόγον, διὰ μὲν τοῦ τοιοῦτου τρόπου τὸ συμφέρον οὐχ οἷόν τε κατασκευάσασθαι πρὸς τὴν ἀπὸ τῶν ἄλλων ἐμψύχων ἀσφάλειαν μᾶλλον περ ἢ τῶν ἀψύχων, ἐκ δὲ τοῦ τὴν ἐξουσίαν λαμβάνειν, ἣν νῦν ἔχομεν, εἰς τὸ κτείνειν αὐτά, μόνως ἔστι τὴν ἐνδεχομένην ἔχειν ἀσφάλειαν. Hermarchus, fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.12.5ff.; Translation by Clark, modified. Alberti uses this passage to argue for four claims: (1) that there are laws without agreements, (2) that there are regulatory laws and laws of justice, (3) that regulatory laws are useful, but not just, (4) that laws that concern animals are regulatory laws (1995: 167f. and fn. 12). In response to this, one first may say that 'echousia' need not be an entitlement conferred by the law, as Alberti claims; it can also be one that agents naturally have. See, for instance, Democritus' claim that "the laws would not prevent each to live according to her own *echousia* [οὐκ ἂν ἐκώλυον οἱ νόμοι ζῆν ἕκαστον κατ' ἰδίην ἐξουσίην]." 68 DK B 245. If this is so, then the text does not provide an example of a law without agreements (*pace* (1)). Second, as Alberti herself explicitly acknowledges, laws concerning the behavior towards animals could be agreements between two human agents about how to treat animals. It is therefore unclear why a law concerning animals cannot be just, especially if it concerns refraining from harm (*pace* (4)). The passage discusses a scenario, in which animals are contracting with humans, and this hypothetical scenario is dismissed as unrealistic because animals cannot form agreements according to Hermarchus. However, it still follows that if it were possible for animals to form agreements, these agreements would also have the character of being just. Finally, then, since Alberti does not provide other evidence for regulatory laws, the distinction she draws with the help of Hermarchus' text seems dubious (*pace* (2) and (3)).

greatly diminish.⁸⁰ Yet Hermarchus also claims that such agreements are impossible because non-human beings do not possess reason (*ta mē dechomena tōn zōōn logon*), varying Polystratus' claim that animals do not have reason like ours. Without reason, animals will easily violate the terms of the agreements and the end for which the agreements (security) were originally formed will not be obtained. Forming agreements in such a situation indeed seems futile. Thus, Hermarchus seems right to insist that animals do not have reason and hence cannot partake in justice – at least not in the way being discussed here, namely, in forming agreements with human beings. However, Hermarchus also speaks about “the rest of the animals” (*ta loipa tōn zōōn*), which – on an alternative reading – could again imply that only certain animals are unable to form agreements, while others indeed are able to do so, even if such a reading is unlikely given the evidence about the cognitive capacities of animals according to Epicurean psychology.

The case against agreements with animals in Epicureanism thus seems quite compelling. However, Lucretius also discusses their cognitive capabilities and their relationship to human beings in detail. First, note that throughout *The Nature of Things*, Lucretius diverges from other Epicureans in what he thinks animals are capable of,⁸¹ of all Epicurean authors whose work on the subject is extant, Lucretius grants animals the most extensive cognitive capacities. Most significantly, Lucretius claims that animals have *animus*, which is the Epicurean technical term for a rational soul.⁸² And as we

⁸⁰ Note that the argument is wholly anthropocentric: Animals are not to be protected and included in the sphere of justice because of themselves, but because this would mean that human beings would be exposed to less threats.

⁸¹ See Sorabji 1993: 28f.

⁸² *On the Nature of Things* II.270. On the distinction between *animus* and *anima*, see Lathière 1972. I set aside the question of whether animals experience emotions. On this point, see the

already saw above, it is above all having certain cognitive capacities that will ultimately decide whether animals are capable of forming agreements. It seems, then, that already at the outset, Lucretius is not the best source for the orthodox Epicurean position.

Be this as it may, we find the following passage in Lucretius' account of cultural development in book V of *On the Nature of Things*:

For every species that you see breathing the breath of life has been protected and preserved from the beginning of its existence either by cunning or by courage or by speed. There are also many that survive because their utility has commended them to our care and committed them to our guardianship. In the first place, the fierce breed of savage lions owes its preservation to its courage, the fox to its cunning, and the deer to its speed in flight. On the other hand, the light-slumbering and loyal-hearted dog and every kind of beast of burden, as well as the fleecy flocks and horned herds, are all committed, Memmius, to the guardianship of human beings. They were glad to escape from the wild beasts and seek peace and the plentiful provisions, procured by no exertion of theirs, which we give them as a reward for their utility. But those animals that nature endowed with none of these qualities, so that they were unable either to be self-supporting or to render us any useful service, in return for which we might allow their kind to have sustenance and security under our protection, were of course an easy prey and prize for others, shackled as they all were by the bonds of their own destiny, until nature brought their species to extinction.⁸³

discussion in Konstan 2008: 18ff. Similarly, I set aside the further suggestion that the Epicureans were 'memorists', that is, they thought that reason is neither necessary for human beings nor animals, but that memory is the decisive intellectual capacity, as Frede 1990 claims. For some discussion, see Sorabji 1993: 76f. Eric Brown suggests to me in conversation that the discussion of the cognitive capacities of animals can also be traced back to Plato's comments about whether there is belief (*doxa*) in the irrational parts of the soul, that is, the appetitive and spirited parts (see, for instance, *Republic* 441a f. and 571c f.). If there is indeed belief in the irrational part, it seems that such a view could lend support to the view that interspecies agreements are possible: Animals that do not have a rational soul could thus still form beliefs, which seems to be the prerequisite for forming agreements; if, by contrast, there are no beliefs in the irrational part of the soul, interspecies agreements are less likely. In any event, note, though, that Lucretius' view is peculiar in so far as he already allows animals to have a rational part of the soul.

⁸³ *Multaque tum interiisse animantum saecula necessest / nec potuisse propagando procudere prolem. / nam quae cumque vides vesci vitalibus auris, / aut dolus aut virtus aut denique mobilitas est / ex ineunte aevo genus id tuta<ta> reservans. multaque sunt, nobis ex utilitate sua quae / commendata manent, tutelae tradita nostrae. / principio genus acre leonum saevaue saecula / tutatast virtus, volpes dolus et fuga cervos. / at levisomna canum fido cum pectore corda, / et genus omne quod est veterino semine partum / lanigeraeque simul pecudes et bucera saecula / omnia sunt hominum tutelae tradita, Memmi; / nam cupide fugere feras pacemque secuta / sunt et larga suo sine pabula parta labore, / quae damus utilitatis eorum praemia causa. / at quis nil horum tribuit natura, nec ipsa / sponte sua possent ut vivere nec dare nobis / utilitatem aliquam, quare pateremur eorum / praesidio nostro pasci genus esseque tutum, / scilicet haec aliis*

The text distinguishes the two kinds of animals, which gives additional grounds for singling out wild animals in *On Nature* XXV, as I briefly suggested above. On the one hand, the text claims, there are wild animals such as lions, foxes, and deer that cannot be domesticated. On the other hand, it continues, there are those animals that can be domesticated: working animals that one would typically encounter on a farm and that are common in any agrarian society such as those of antiquity. While wild animals according to Lucretius possess certain natural capacities that enable them to procure protection and survival on their own, the domestic animals do not. However, animals such as dogs, cattle, and sheep provide valuable services to human beings. Despite their inability to protect themselves and procure security and survival on their own, they can compensate for this lack by the benefit (*utilitas*) they provide for human beings. Human beings in turn provide protection and survival for them. Accordingly, it is beneficial for a farmer to take care of his watchdog or sheepdog or the survival of his flock that yields milk and wool (in the case of sheep) or milk (in the case of cows).

To sum up, then, there are three clues that make agreements between human beings and animals seem possible on Lucretius' view. First there is the frequent use of the word '*utilitas*,' which is a nominalized translation of the Greek adjective '*sumpheron*' and thus recalls the Epicurean description of justice as the expression of benefit in KD 31. Second, there is the idea that there is an exchange of goods and services between domestic animals and human beings in effect ("*damus utilitatis eorum praemia causa*"), which recalls the idea of a barter and hence a type of agreement. And then finally, some

praedae lucroque iacebant / indupedita suis fatalibus omnia vinculis, / donec ad interitum genus id natura redegit. On the Nature of Things V.855ff.; Trans. by Smith.

content of the barter between humans and animals involves security and protection, which also play a key role in Epicurean agreements.

While the evidence in Lucretius stands against the evidence in Polystratus and Hermarchus, I have already pointed out above that Lucretius is an unlikely candidate for being a representative of Epicurean orthodoxy. He not only allows that animals have more extensive cognitive capacities, as I showed above, but he also seems to claim in *On the Nature of Things* that the content of agreements is more expansive than it is for Epicurus: It is not merely confined to the obligation to refrain from harm, but also encompasses the positive obligation to help others. These differences may help explain the difference between the Lucretian account and that of other Epicureans.⁸⁴ Furthermore, note that the passage quoted above does not explicitly talk about agreements; the word '*foedus*' does not appear in the text. Lucretius explicitly calls the relationship between animals and human beings one of guardianship (*tutela*).⁸⁵ Guardianship, as it is described here, however, implies an asymmetrical relationship: The patron ensures that the patronized is secure and the patronized provides some other benefit to the patron, but this benefit need not be security.⁸⁶ In the case of cows

⁸⁴ See Sorabji 1993: 28f. *pace* Annas 1992: 134ff. and Campbell 2003: 126f. See also Campbell 2008: 9ff.

⁸⁵ V.861 and 867.

⁸⁶ Guardianship (*tutela*) is a technical term of Roman law. See, for instance, the comments in the Roman jurist Gaius (2nd century CE): "Where the head of a family has children in his power he is allowed to appoint guardians for them by will. That is, for males while under puberty but for females however old they are, even when they are married. For it was the wish of the old lawyers that women, even those of full age, should be in guardianship [*Permissum est itaque parentibus liberis, quos in potestate sua habent, testamento tuores dare: masculini quidem sexus inpueribus, <feminini vero inpueribus puberibus>que, <vel> cum nuptae sint. veteres enim voluerunt feminas, etiamsi perfectae aetatis sint, propter animi levitatem in tutela esse*]. *Institutes* I.144; Trans. by Gordon and Robinson. See also the texts on guardianship in Lefkowitz and Fant 2005: 99ff. While there is no direct equivalent to guardianship in Greece, one may assume, however, that women are understood to be in a similar dependency relationship. See discussions in Pomeroy 1975 and Reinsberg 1989.

and other “beasts of burden,” this is especially clear, since cows are not used in any way to fend off enemies. In the case of dogs, a dog can be said to keep human beings secure, but it seems that even here human beings would not be said to enter the agreement to be safe from dogs, but rather so that dogs can help them to be safe from third parties. Consequently, David Konstan is right that tending to animals is not the same as forming an agreement with them.⁸⁷ However, interactions with animals do seem to have certain features that are similar to the interactions that are characteristic of Epicurean agreements⁸⁸ so that at least in Lucretius agreement-like understandings with animals are possible, even if these are not agreements in the sense of those that lead to the existence of justice.

The same conclusion can also be drawn from another observation. Lucretius often describes more primitive stages of cultural evolution in such a way that prefigure elements that are characteristic of later stages of development. For instance, describing the understandings among our primitive ancestors even at a time when human beings had not yet come together and formed agreements, Lucretius writes: “And Venus joined the bodies of the lovers in the woods; for either mutual desire united them or the violent force of the man and his excessive lust or presents, acorns and gathered strawberries or pears.”⁸⁹ The context of this passage is to explain how lovers unite to procreate. Besides rape, Lucretius mentions mutual attraction and desire of the partners as well as what could be called prostitution: the exchange of sexual favors for delicacies. In both these

⁸⁷ 2008: 91, fn. 15; *pace* Goldschmidt 1977: 53 and Campbell 2003: 227ff.

⁸⁸ That is, as I explained above, they are a form of exchange that involves benefit in some way and, at least in some cases, security also seems to play a role.

⁸⁹ *et Venus in silvis iungebat corpora amantum;/ conciliabat enim vel mutua quamque cupido/ vel violenta viri vis atque inpena libido/ vel pretium, glandes atque arbata vel pira lecta.* V.962ff.

cases, mutual consent to have sexual intercourse seems to play a role. Consequently, one may even say that a mutual benefit is recognized by both parties. However, again, while Lucretius does not call the exchange of strawberries for sexual favors or the decision of men and women to have sex ‘agreements,’ these interactions may be said to exhibit some features of agreements insofar as they involve benefit.

It is thus tempting to also speak of ‘agreements’ in the case of animals and assume a multi-tiered view of what counts as an agreement.⁹⁰ Besides the agreements that lead to justice, on the one hand, and those that lead to the existence of the laws, on the other hand, there would also be agreements with animals and the agreements of the original state that were just discussed, among others. Unfortunately, the textual evidence for such a reading of the Epicurean theory of agreements is rather slim. And even if this were the Epicurean view, it would still imply that there are no agreements with animals in the full sense and so also no justice in regard to them. After all, the agreements with animals would be of a completely different type than the ones that human beings form with each other.

Nevertheless, from what was said, it is clear that animal interests are at least in part taken into account. First, the understandings with animals described in Lucretius, even if they are not agreements that lead to the existence of justice, seem to acknowledge that animals have interests that are served in the understanding. And second, even if there are no agreements with animals, there is no reason why Epicurean agents would deliberately harm others, including animals.⁹¹ Accordingly, an Epicurean agent could also easily opt for a vegetarian diet (which was more common in antiquity

⁹⁰ As Eric Brown suggests to me. See also Campbell 2008: 9ff.

⁹¹ See the more detailed discussion in chapter 4.

than a meat-based diet), given that plant food can be obtained more easily and in a more worry-free way than meat (which may require a perilous hunt). In fact, Gordon Campbell has recently pointed to a neglected passage that makes a stronger than ever case for the view that the Epicureans advocated vegetarianism.⁹² If Campbell is right, it seems likely that Epicurean agents would readily leave alone animals (that is, refrain from harming them), if these animals do not present a threat to them.⁹³

2.3.2. Interethnic Agreements

In the second part of KD 32, the possibility of interethnic agreements is discussed. Again, as in the case of animals, Epicurus leaves open whether there are peoples unable to form agreements. As I already pointed out above, '*ethnē*' here can refer to Greeks and non-Greeks alike, which means that there can also be Greeks who are unable to form agreements on the Epicurean view. In contrast to the case of animals, Epicurus adds that there may also be people who are not *willing* to form agreements, a possibility that is missing in the case of animals. In the first part of KD 32, Epicurus does not distinguish between animals able and willing to form agreements on the one hand and animals unable and unwilling on the other hand. Epicurus only mentioned animals that are unable to form agreements. As a consequence, one may distinguish three criteria that an agent needs to fulfill in order to form agreements. First, as we saw in the discussion of animals, an agent needs to be capable of forming

⁹² Campbell 2008: 13ff.

⁹³ An objection to such a vegetarian reading might be that slaughtering animals and eating meat was often part of religious rituals in antiquity. As a result, Epicurean agents could have also had non-dietary reasons for harming animals. Yet because the Epicureans also argue that the gods have no direct influence on human affairs, it seems difficult to assess what value they bestowed on religious rituals. Certainly, they hold that participating in them contributes to their *aponia* and *ataraxia* by helping them to meet the expectations bestowed on them by the community around these rituals. But is there really any value for religious rituals that involve the sacrifice of meat in an ideal Epicurean community?

agreements, that is, possess the prerequisite capacities. Second, agents need to be able to form agreements, that is, circumstances must be such that it is possible for agents to form agreements. And third, finally, agents also have to want to form agreements.

In regard to other peoples, it is clear that at least some peoples are able and willing to form agreements, for otherwise there would be no agreements at all. The interesting issue is thus whether the Epicureans think that some people are incapable of forming agreements as a people. Here, the textual evidence is slim. Epicurus merely notes that not everyone has the capacity of being a Sage, which seems to indicate that he endorses natural differences between human beings.⁹⁴ As a result, the Epicureans could also easily claim that some people are unable to form agreements, although non-Sages supposedly are able to form agreements. It is thus unclear to what extent the Epicureans think that other peoples are able, capable, and willing to enter into agreements. Perhaps this is also a question that Epicureans did not much reflect on, being rather interested in the nuts and bolts of forming agreements, and the advice that security has to be obtained in other means if agreements are not possible.

2.3.3. Intersexual and Intergenerational Agreements

The possibility of forming agreements with women and children is not discussed directly in any Epicurean text. However, much can be deduced from a passage in which Lucretius explains how it is decided that provisions for women and children should be made. I take this discussion to complete the previous one and to show that even if members of certain groups do not form agreements their interests may still be protected

⁹⁴ Fr. 226 Usener.

by agreements. The passage in question was already quoted above, but, for the sake of completeness, I quote it again here:

It was then, too, that neighbors eagerly began to form *amicitiae* one with another, not to hurt or to be harmed, and claimed protection for their children and womenfolk, indicating by means of inarticulate cries and gestures that it is fair or just [*aequum*] that the weak are pitied by everyone. Although it was not possible for concord to be achieved universally, the great majority kept their agreements [*foedera*] loyally. Otherwise, the human race would have been extinguished at that early stage and could not have propagated and preserved itself to the present day.⁹⁵

The context of the passage is the description of the beginning of society: Human beings come together and thus agree on the first moral norms that are to be in place among them. Lucretius calls these initial agreements “*amicitiae*” and the characterization that they involve not hurting and being harmed (*nec laedere nec violari*) is sufficient to make clear that Lucretius must have the same kinds of agreements in mind that are described in the *Principal Doctrines*. Now, what is interesting about the passage is that it claims that here the agreement includes pity for the weaker members of society. This implies, first, that the weaker members of societies, by which Lucretius means women and children, did not form the initial agreements by themselves, but were excluded from this process.⁹⁶ Second, it is also clear that on Lucretius’ view, women and children also profit from agreements insofar as they are included in agreements. For even if the

⁹⁵ *tunc et amicitiam coeperunt iungere aventes / finitimi inter se nec laedere nec violari, / et pueros commendarunt muliebrique saeculum, / vocibus et gestu cum balbe significarent / imbecillorum esse aequum misererier omnis. / nec tamen omnimodis poterat concordia gigni, / sed bona magnaque pars servabat foedera caste; / aut genus humanum iam tum foret omne peremptum / nec potuisset adhuc perducere saecula propago.* Lucretius, *On the Nature of Things* V.1019ff.; Trans. by Smith, modified. See also the more detailed discussion in chapter 3.

⁹⁶ Women and children are explicitly mentioned in the text, but ‘the weak’ could also entail the elderly or mentally or physically disadvantaged. These are more difficult to account for than women and children since women and children, in most cases can be said to have a patron (their father, their husband/relative, etc.), whereas one can very easily imagine cases where this is not true of someone who is elderly or disadvantaged. I bracket this problem here.

agreement did not involve a pledge to help the weak directly and merely consisted in not harming them, the weak would profit from the agreement, even if they themselves would not be among the contracting parties. Of course, this entails a rather optimistic view of Epicurean contracting agents. But be this as it may, it seems to follow from Epicurean moral psychology, which I discuss in more detail in chapter 5, that Epicurean agents do not have an incentive to harm others.

That there is no indication that women form agreements in Epicurean theory might be considered surprising. After all, in contrast to other schools, the Garden was known to be open to female members and thus adopted relatively progressive views on women. In response to this, one can perhaps point out that women could stand in agreement-like relationships to men who are able to form agreements. In fact, “guardianship” is a technical term of Roman law used to describe the relationship between women and men – and to children when they are under age. However, we already examined the shortcomings of such a reading above. Nevertheless, since the main purpose of agreements is to obtain security and Epicurean agents are not by nature out to harm others, it seems that even if women and children do not form agreements, they would – at least – qua dependents have some share in the security obtained by the agreements of justice.

2.4. Summary

In this chapter, I discussed Epicurean agreements and laid out what I take to be the basic Epicurean view. In doing so, I raised three issues. First, I discussed that agreements are about not harming each other and not being harmed. I argued that this is an explication of security, which in Epicurean theory serves the purpose of promoting a state of freedom from bodily pain and mental distress.

Second, I described the relationship between benefit and justice more closely. I claimed that there are beneficial things prior to agreements, but that there is no justice without agreements. Furthermore, I distinguished two processes of agreements in the Epicureans (the agreements that lead to justice and agreements that lead to the laws) and so laid the foundation for understanding their theory as a kind of social contract theory.

Third, I discussed which parties are able to form agreements on the Epicurean point of view. I dealt with agreements in regard to three groups: animals, other peoples, and women and children. I argued that the Epicureans can distinguish between whether agents are capable, able, and willing to form agreements and I showed that even if agreements in the full sense are not possible with the three groups just distinguished, (1) there may well be agreement-like understandings with them, (2) even if certain agents are not able to form agreements, their interests may still be taken into account in the agreements that are formed about them, and (3) in general, Epicurean agents are not disposed in such a way as to harm those with whom they have not formed agreements with, as long as these other agents do not pose a threat to the Epicureans.

3. THE ETIOLOGICAL ACCOUNT OF JUSTICE AND LAW: EPICUREAN SOCIAL CONTRACT THEORY

After setting out the basic elements of the Epicurean theory of justice in the previous chapter, I now turn to the etiological account of Epicurean contractual justice. In so doing, I show how the elements of Epicurean agreements that I identified in chapter 2 work together from a diachronic perspective and how the Epicurean theory is best understood as a type of social contract theory.

Epicurus' own etiological account of contractual justice, which was probably found in book 12 of *On Nature*, has not come down to us.⁹⁷ Fortunately, though, Lucretius' account, which is probably closely modeled on Epicurus' own version, can be found at *On the Nature of Things* V.925-1457. This text will be the principal source in this chapter, and for the most part, the following can be understood as a commentary on Lucretius' culture story, which comprises an etiological account of justice. In the previous chapter, I already pointed out some idiosyncrasies in Lucretius in comparison to what one would expect given central tenets of Epicureanism; we will see this trend confirmed in this chapter.⁹⁸ However, while *On the Nature of Things* V is the principal source, there is also an Epicurean culture story that is ascribed to the second head of the Garden,

⁹⁷ See Long and Sedley 1987: II: 151. The Epicurean culture story is only one of many; *Kulturentstehungslehre* was a flourishing genre in antiquity. See above all Lovejoy and Boas 1965 [1935] as well as the studies by Cole 1990 [1967], Spoerri 1959, and Gatz 1967. A helpful overview of the different themes in prehistory and accounts of the Golden Age are found in Campbell 2002b: 20ff. and Campbell 2003: 336ff. (= appendix B).

⁹⁸ In this context, recall that Lucretius stresses that Epicureanism is a bitter pill to swallow for his fellow Romans (see I.936ff. and IV.11ff.). For an attempt to reconstruct the contents of Epicurus' *On Nature* based on Lucretius' *On the Nature of Things*, see Sedley 1998: 94ff.

Hermarchus.⁹⁹ This text will serve as a corollary to the description in Lucretius and help distill an Epicurean account of how justice and law come to be.

In what follows, I will first comment on the structure of the Lucretian account and briefly describe how it can be understood as a kind of social contract theory (3.1). These observations will then structure the following three sections, each of which will be devoted to a distinct part or phase of cultural development according to the Epicureans, corresponding to different phases of the development of justice and law (3.2., 3.3., and 3.4).

3.1. The Structure of Lucretius' Culture Story and Social Contract Theory

As many scholars have pointed out, Lucretius' *Kulturentstehungslehre* does not proceed chronologically. Lucretius describes the development of prehistoric society and then contrasts it with modern society, leaving out certain intermediate steps of this development and jumping back and forth between the prehistoric time and the modern age.¹⁰⁰ This may be due to the circumstances of the work's composition: One of the few things we do know about Lucretius is that he died before being able to finish the poem as a whole. Since book five is one of the last books, the oddities in the text could thus be

⁹⁹ Porphyry, *On Abstinence* I.7-12 = fr. 34 Longo Auricchio. Porphyry describes Hermarchus' text, which is probably an excerpt from his great work *Against Empedocles*, as a "great genealogy [*genealogian makran*]" (*On Abstinence* I.7.1; see also Long Auricchio 1988: 126f. and Gallo 1985). Unfortunately, it has only been partially preserved. Due to this partial preservation, the text can only provide a limited impression of what the full account may have looked like. On Hermarchus, see above all the editions of Krohn and Longo Auricchio as well as the comments in Erler 1994: 227ff., Obbink 1988, and Vander Waerdt 1988. For similarities between Lucretius and Hermarchus' account, see Müller 1972: 74ff. and Müller 1987.

¹⁰⁰ Besides the much-discussed remarks on fire (see the overview in Westphalen 1957: 67f. and criticism in Manuwald 1980: 34f.), a good example for this is the discussion of the domestication of animals (V.855ff.). It precedes Lucretius' prehistory proper and is discussed in the context of the survival of different species instead of being discussed later in the text in the context of human beings first settling down.

explained by Lucretius' premature death.¹⁰¹ Be this as it may, some scholars argue that certain parts of the text should be transposed to restore the real order of Lucretius' thought or even that the poem contains two separate cultural histories: one that is more developed and one that is a less polished draft included by a conscientious editor.¹⁰²

But while some later passages might not fit perfectly into a neat schema, the majority of scholars now rightly agree that the section of the poem that deals with the creation of society can be roughly divided into three parts. These parts correspond to three stages of cultural development on the Epicurean view.¹⁰³ In the first part of his cultural history, Lucretius describes human beings and their primitive nature in their original condition or state (V.925-1010). In the second and third part, he describes how civilization comes into being, distinguishing between two distinct phases of development (V.1011-1104 and V.1105-1457).

As Bernd Manuwald convincingly argues, this division is based on an important methodological distinction in Epicurean philosophy, which is most succinctly expressed in the *Letter to Herodotus*. The passage in question is in part corrupt, but the main point that is emphasized in the text is nonetheless sufficiently clear. According to Epicurus, any process of cultural development really consists of two distinct processes:

¹⁰¹ On this reading, perhaps *On the Nature of Things* could also be the product of an unknown ancient editor. The Church Father Jerome even suggests Cicero. See Eusebius, *Hieronymus' Chronicle* 171.3 Olympiad.

¹⁰² This thesis is found in Merlan 1950 who is followed by Furley 1978: 22ff. For criticism, see Westphalen 1957: 122ff., Perelli 1967: 271f., and Manuwald 1980: 9ff.

¹⁰³ The clearest discussion of the structure of Lucretius' *Kulturentstehungslehre* is found in Manuwald 1980: 8ff. He follows Barwick 1943, the first 20th century commentator to argue for a coherent structure of the account. A good overview of the debate, including a criticism of Manuwald, is found in Sallmann 1986.

Furthermore, one must suppose that [human] nature was taught a large number of different lessons just by the facts themselves, and compelled [by them]; and that reasoning later made more precise what was handed over to it [by nature] and made additional discoveries – more quickly among some peoples, and more slowly among others and in some periods of time <making greater advances> and in others smaller ones.¹⁰⁴

In other words, during the first process of development, the development is due to nature (*phusis*) and proceeds from the things themselves (*hupo autōn tōn pragmatōn*). The idea here is that things themselves make certain developments possible while they preclude others. An example of this is the human larynx.¹⁰⁵ It allows human beings to produce sounds. In the course of time, human beings start forming more systematic sounds because of certain impressions (*phantasmata*) or feelings (*pathē*) they have. Human beings thus slowly learn to use this organ by a process that is gradual, but not systematic. However, the continual use of the natural capacities kicks off the development of what will later become language. In order for this to happen, though, a process of reasoning (*logismos*) is needed.¹⁰⁶ And this second process of development is distinct from the first.¹⁰⁷ During this process, reasoning perfects what was started by nature – more quickly in some cases, more slowly in others. Reasoning

¹⁰⁴ Ἀλλὰ μὴν ὑποληπτέον καὶ τὴν φύσιν πολλά καὶ παντοῖα ὑπὸ αὐτῶν τῶν πραγμάτων διδασθῆναι τε καὶ ἀναγκασθῆναι· τὸν δὲ λογισμὸν τὰ ὑπὸ ταύτης παρεγγυηθέντα ὕστερον ἐξακριβοῦν καὶ προσεξευρίσκειν ἐν μὲν τισὶ θάπτον, ἐν δὲ τισὶ βραδύτερον καὶ ἐν μὲν τισὶ περιόδοις καὶ χρόνοις † ἀπὸ τῶν ἀπὸ τοῦ ἀπείρου † **, ἐν δὲ τισὶ καὶ ἐλάττους. *Letter to Herodotus* X.75; Trans. by Inwood and Gerson.

¹⁰⁵ *Ibid.* X.75f.

¹⁰⁶ Referring to Diogenes, *Lives* X.32 and 39, Detel writes that “[f]ür die logischen Beziehungen zwischen empirischen und theoretischen Sätzen verwendet Epikur selber den Terminus ‘λόγισμος’ (1975: 29, fn. 23). This seems to be confirmed by *ibid.* X.76, 117, 120, and 132 and KD 19. See also Asmis 1984: 204ff.

¹⁰⁷ In accordance with Manuwald (1980: 20f.), I understand the two processes of cultural development to be successive chronological periods overall, although surely, there might be some overlap. For an alternative view, see Furley 1978: 11.

intervenes after nature has already made a beginning. In this case, human reasoning adds linguistic conventions by systematizing the random sounds that were produced in the first cultural phase. Furthermore, it helps posit (*tethēnai*) and fix meanings to get rid of ambiguities and facilitate communication.

The distinction between a *phusis*-development process and a *logismos*-development process in any cultural development yields three distinct phases of cultural development:

- (1) *an original state* or condition of humanity, during which no cultural development has yet taken place,
- (2) *a first cultural phase*, during which the development of natural human capacities takes place (*phusis*-development), and
- (3) *a second cultural phase*, during which reasoning perfects the process of development that nature started (*logismos*-development).

This distinction is especially relevant for the questions about justice and law because the three phases of cultural development correspond to different degrees of knowledge and implementation of justice and laws. As we will see, justice and law do not exist in the original state and human beings have no understanding of justice and laws. In the first cultural phase, human beings gain an understanding of what is just, based – in some way – on what is beneficial, and they implement this understanding by means of reciprocal agreements. However, at this point in the societal development, there are no laws. Finally, in the second cultural phase, after some failed attempts, what is beneficial is codified into laws. As a result, a community not only has reciprocal agreements that correspond to moral norms but also a more institutionalized understanding and practice

in the form of laws.¹⁰⁸ In short, then, one can rightly speak of a “double birth” of justice and law in Epicurean theory.¹⁰⁹

The analysis just presented gives the Epicurean account what may seem like a temporal dimension, which – from a modern perspective – might lead to its immediate dismissal as a just-so story. In response to such a criticism, one can point out that a more charitable reading of the Lucretian text, namely, to read it as a counter-narrative to the explanations offered by other schools of the Hellenistic period. This counter-narrative ‘proves’ that even if Epicurean principles about the natural world are adopted and Stoic and Platonic ideas about providence and demiurgy are abandoned, all phenomena in the world, including those in the social and political realm, can still be explained. In short, a plausible Epicurean explanation of all phenomena is possible.¹¹⁰

¹⁰⁸ Hermarchus’ account, as it is preserved in Porphyry, by contrast, seems to be restricted to the second phase of cultural development. It only deals with the laws. However, it follows the same general schema that Lucretius follows, as the discussion of *epilogismos* that is taken to be characteristic of law-giving at I.8.2 and I.10.4. shows. (I discuss the latter passage in detail below.) The comments in Diogenes of Oenoanda (fr. 12 Smith) are compatible with such a reading as well; it is difficult to say what stage of development the passage describes. Much seems to depend on whether ‘*epinoia*’ is used for any idea in the mind or rather for specific ideas that require *epilogismos*. See also the discussion in chapter 7 below. On *epilogismos*, see Arrighetti 1952, De Lacy 1958, and Schofield 1996.

¹⁰⁹ Sasso 1979: 7ff. The development just outlined again emphasizes two key features of the Epicurean theory of justice and law that I already briefly discussed in the previous chapter and that I will take up again in more detail in chapter 4 but that I wish to flag at this point: (1) that justice and law depend on nature in some sense and are thus based on facts about the world and (2) that justice and law are importantly distinct phenomena. Furthermore, for a discussion of the parallelism between the evolution of language and the evolution of justice, see Müller 1969: 306ff. as well as Müller 1972: 93ff., Goldschmidt 1977: 165ff., and Ranger 2007: 81f. I agree with Müller that one ought to be careful in drawing connections between the discussions of justice and language in Epicurus (see also Pigeaud 1983: 141 and Alberti 1995: 170f. and fn. 18); not all readers have been careful enough (for instance, Long and Sedley 1987: I: 134 and II: 137, Cole 1990: 73, Arrighetti 1973: 553, and Vander Waerdt 1988: 92, fn. 21). Likewise, however, it seems to me that Müller may be overemphasizing the difference between the account of language and the account of justice and thereby loses sight of the commonalities the two accounts.

¹¹⁰ In chapter 4, I will also call such an explanation ‘naturalistic.’ In this context, note also that, as some scholars point out, the exact epistemic status of the culture story in *On the Nature of Things*

Be this as it may, as the above comments about the three phases of development and role of agreements already suggest, the Epicurean theory of justice and law is a kind of social contract theory. In the remainder of this section, let me briefly comment on some similarities between Epicurean theory and early modern theories of the social contract and thus show that Epicurean conception of justice and the law is part of a more comprehensive political theory. In this context, it is helpful to draw on the three “essential features” of social contract theory Charles Kahn identifies:¹¹¹

(1) There is a description of the original condition of mankind, according to which human beings do not yet live in society.

(2) There is some deficiency to the original condition that makes it necessary for human beings to unite and hence to form society.

(3) Human beings form society by means of agreements and so remedy the deficiency of the original condition.

All of these three features can also be found in the Epicurean account. In what follows, I will comment on each of the three distinct phases of cultural development and thereby show in what way the Epicurean theory of justice and law exhibits these three essential features of social contract theory.

V is difficult to ascertain. See Goldschmidt 1977: 77f. and Kahn 1981: 93. One could think of the account either as describing a historical state of affairs or as being merely an explanatory aid.

¹¹¹ 1981: 93. On ancient social contract theory, see also Kaerst 1909, Guthrie 2003 [1971]: 135ff., Müller 1985, and Sprute 1989.

3.2. The Original State

Before turning to the description of the process of societal development proper, Lucretius discusses human beings as they were before they entered society. I will call this state of humanity as a whole the 'original state.' By this, I mean the original condition of humankind, not a political or legal state that precedes the present day political or legal state. In Lucretius' description, human beings are physically enduring in the original state. They have strong bones and sinews and are resilient to heat and cold as well as to different kinds of diseases.¹¹² They live the life of hunters and gatherers.¹¹³ And they do not have fixed homes, but sleep under the open sky and wear no clothes.¹¹⁴ In short, human beings are very hardy creatures that live a rather primitive life. Humankind as a whole does not yet possess the arts that are an important part of human culture. Lucretius explicitly names plowing, which is the requisite to farming and characteristic of a sedentary life-style, along with iron-molding and casting, which are important for tool-making.¹¹⁵ Furthermore, human beings lack the ethical and political knowledge that is the prerequisite for society to come into being. As Lucretius writes, "Nor could they [primitive human beings] look to the common good [*commune bonum*], nor did they know to make mutual use of any moral norms [*moribus*] or laws [*legibus*]."¹¹⁶

¹¹² Lucretius, *On the Nature of Things* V. 925ff.

¹¹³ *Ibid.*, V.937ff. and 966ff.

¹¹⁴ *Ibid.*, V.953ff.

¹¹⁵ *Ibid.*, V.933ff.

¹¹⁶ *nec commune bonum poterant spectare neque ullis / moribus inter se scibant nec legibus uti.* *Ibid.*, V.958f. Trans. mine.

Let us look more closely at these lines. First, at 958f., Lucretius makes an epistemological claim (“could not look (*nec ... poterant spectare*)”) about the extent of moral knowledge in the original state. The emphasis in this claim lies on the common good (*commune bonum*). What exactly the ‘common good’ is for Lucretius is unclear. Lucretius does not repeat the expression elsewhere in the poem and it seems that ‘*commune*’ (common) could be understood in two ways. First, ‘common good’ could merely refer to the good that is common to all. It would then be equivalent to the ‘natural good’ that Epicurus mentions in several texts.¹¹⁷ This ‘natural good’ is the Epicurean highest good or end that all agents pursue: pleasure (*hedonē*), understood as freedom from bodily pain (*aponia*) and mental distress (*ataraxia*), which according to the Epicureans in the cradle argument, all beings pursue from birth.¹¹⁸ Yet such a reading does not explain why human beings were not able to form agreements at this point in the culture story. First, if the common good is the natural good, that is, Epicurean pleasure, it seems that human beings in the original state should also pursue it. But Lucretius claims as well that human beings in the original state cannot look to this good, which would result in a contradiction. Second, moreover, this reading seems to imply that the first human beings fail to form communities because they have not grasped a fact about the world (namely, that what the natural good for human beings is). This seems hardly plausible.

Let us therefore suggest an alternative reading. On this reading, the ‘common good’ refers to the good of the group as a whole as supposed to the good of each

¹¹⁷ KD 7. See also *Letter to Menoeceus* 128f.

¹¹⁸ See Cicero, *On Ends* I.30. For different readings of the cradle argument, see Brunschwig 1986 (who argues that the first good is kinetic pleasure) and Held 2007: 58ff. (who argues that the first good is katastematic pleasure).

individual. The claim being made at this point in the text is thus that humans in the original state have not yet developed an understanding of the good that entails the life with others. In other words, '*commune bonum*' at V.958 means that human beings in the original state have not yet grasped the 'common' aspect of the good. This is true regardless of which particular 'philosophy' an agent ascribes to, although for the Epicureans, it would mean that for any given agent, being in a state of pleasure is compatible with the pleasure of the larger group as a whole and that, in some scenarios, pleasure is even more easily obtained in a group than by oneself.

The main reason why human beings lack an understanding of the common good according to the Epicureans at this point in societal development is that the first human beings are self-sufficient beings and, as such, are not dependent on others to procure this good. As Lucretius puts it: "Individuals [in the original state] seized whatever prize fortune had offered them, trained as they were to live and use their strength for themselves alone."¹¹⁹ The family, the basic unity of society, does not yet exist. Men and women meet to procreate but this interaction is not enough to form more lasting ties; there is no appreciation of community among our first ancestors according to Lucretius.¹²⁰ And consequently, the good does not yet need to include considerations about other human beings. Only when human nature changes in the course of societal development, do human beings lose their self-sufficiency, and only through this loss,

¹¹⁹ *quod cuique obtulerat praedae fortuna, ferebat / sponte sua sibi quisque valere et vivere doctus.* Lucretius, *On the Nature of Things* V.960f.; Trans. by Smith, modified.

¹²⁰ *Ibid.*, V.962ff. One wonders how children are raised at this stage in the process of cultural development, but the text does not address this issue.

human beings start realizing the importance of cooperation with other human beings to fulfill their desires, which shape what they perceive as the common good.¹²¹

This brings us to the moral norms (*mores*) and laws (*leges*) that are mentioned in the passage quoted above. First, note that Lucretius clearly distinguishes between what one could call moral norms and legal norms, which foreshadows the important difference between justice, which comes to be in the first phase of cultural development, and the laws, which only come to be in the second phase of cultural development. Furthermore, note that because human beings at this point of development are self-sufficient, they do not need to interact with others. As a result, moral norms and laws are of no use (*nec ... uti*) to them. After all, moral norms and laws regulate behavior in human society and have no value for the Epicureans independently of the use they bring.

¹²¹ From the above remarks, it is clear that the Epicureans deny that human society comes to be 'by nature,' that is, that from the beginning of humankind it is in human nature to form communities. See also the discussion of justice as being 'by nature' in chapter 4. Such a view is also supported by the overwhelming majority of other sources. In this vein, we read in Themistius that Epicurus thinks that "human beings are not by nature sociable and cultivated [μὴ φύσει εἶναι τὸν ἄνθρωπον κοινωνικόν τε καὶ ἡμερον]" (fr. 551 Usener; Tran. mine) and Epictetus reports: "when [Epicurus] wishes to get rid of the natural communion of human beings with each other, he makes use of the same thing that is gotten rid of. For what does he say? 'Do not be deceived, men, nor lead astray or cheated. There is no natural communion among rational beings with each other, believe me. Those who say other things deceive and delude you' [ὅταν ἀναιρεῖν θέλῃ τὴν φυσικὴν κοινωνίαν ἀνθρώποις πρὸς ἀλλήλους, αὐτῷ τῷ ἀναιρουμένῳ συγχρῆται. Τί γὰρ λέγει; μὴ ἐξαπατᾷσθε, ἄνθρωποι, μηδὲ παράγεσθε μηδὲ διαπίπτετε· οὐκ ἔστι φυσικὴ κοινωνία τοῖς λογικοῖς πρὸς ἀλλήλους, πιστεύσατέ μοι· οἱ δὲ τὰ ἕτερα λέγοντες ἐξαπατιῶσιν ὑμᾶς καὶ παραλογίζονται]" (fr. 523 Usener; Trans. mine). See also *ibid.*: "Epicurus says that there is no human society: everyone takes care of himself [*dicit Epicurus... nullam esse humanam societatem: sibi quemque consulere*]." Trans. mine. The only piece of evidence that society is natural for the Epicureans is a further passage in Epictetus: "Epicurus understands as well that we are by nature sociable [ἐπινοεῖ καὶ Ἐπίκουρος, ὅτι φύσει ἐσμὲν κοινωνικοί]" (fr. 525 Usener; Trans. mine). Müller (1972: 36ff.) convincingly argues this need does not mean that Epicurus actually endorses the position that society is natural, but that he should (from a Stoic perspective), were he more reasonable. Accordingly, Epictetus continues: "but once having placed our good in the body he cannot say anything different [ἀλλ' ἅπαξ ἐν τῷ κελύφει θεῖς τὸ ἀγαθὸν ἡμῶν οὐκέτι δύναται ἄλλο οὐδὲν εἰπεῖν]" (fr. 525 Usener; Trans. mine). As I argue in more detail below, the Epicureans do not deny that society becomes necessary at some point in the societal development, namely, when human nature changes, but that it has always been a necessary part of human nature. On the question of whether society is natural or the product of convention, see also Philippon 1910: 294f., Garbo 1936: 245, and Grilli 1953: 69ff.

Now, is this societal state, in which human beings do not yet live in communities, a good or bad one for the human beings who live in it?¹²² Lucretius' view in this regard is notoriously difficult to pinpoint.¹²³ Indeed, advantages of the original state are weighed against its disadvantages. The Latin poet notes, for instance, that more people died in the primitive state due to attacks of wild animals than at the time that he is writing.¹²⁴ However, while he acknowledges that this number has gone down in post-original state societies, he also points out that these societies pose new risks that were unknown to human beings in the original state: Going out to sea and waging wars only came into being when human beings left the original state.¹²⁵ The original state in Lucretius is thus neither an idyllic state from which the downfall of human beings takes its course nor a lowly stepping-stone to higher levels of human development à la Enlightenment thinkers. Lucretius is the first extant ancient thinker to introduce such a differentiated appreciation

¹²² In this context, see also the discussion on whether the original state is a state of war of all against all. Among those who affirm the claim are Falchi 1902: 158, Guyau 1917: 151, 160, 167, Perelli 1967: 166ff., and Müller 1972: 38ff. (also Müller 1987: 234f., fn. 8, Müller 1988, 117, Müller 1991: 112), and Scholz 1998, 259 and fn. 17 as well as possibly Long 1985: 308. Among those who deny it are Philippson 1910a: 295, Garbo 1936: 249ff., Mitsis 1988: 83 (see also the comments in Annas 1993: 299 and Campbell 2003: 217ff.).

¹²³ One of the major debates in the secondary literature on Lucretius' *Kulturentstehungslehre* is whether Lucretius can be characterized as primitivist or progressivist. See, for instance, Robin 1916, Guyau 1917: 153ff., Burry 1955 [1932], Taylor 1947, Merlan 1950, Keller 1951, Borle 1962, Ruch 1969, Manuwald 1980: 51ff., and Asmis 1996. This is equivalent to asking whether Lucretius believed that human beings in the original state were superior to their predecessors and history was a story of decline (primitivism) or he believed that human beings in the original state were mainly characterized by lack that needed to be overcome and history was a story of progress (progressivism). Put more provocatively, the alternative is thus whether Lucretius was a proto-Rousseau or a proto-Condorcet, authors that are often invoked by commentators discussing this question. Put this way, though, one can easily see, as most recent commentators do, that the dichotomy is misleading when it comes to Lucretius' account (see, for instance, Furley 1978: 9, Müller 1988, and Campbell 2003: 180ff.). Besides the problem of using and thus imposing anachronistic vocabulary, Lucretius' account simply does not fit into this neat schema. On the idea of primitivism in antiquity, see Lovejoy and Boas 1965 [1935]. On the idea of progress in antiquity, see Edelstein 1967, Blundell 1986: 165ff., and Dodds 1973.

¹²⁴ Lucretius, *On the Nature of Things* V.988ff.

¹²⁵ *Ibid.*, V.999ff.

of this pre-cultural state, which will also have consequences for the appreciation of justice and law, as we will see below: Justice and law will be ambiguous social institutions that on the one hand solve a deficit of the original state but on the other hand they bring about new problems and dangers that were absent in the original state.

To sum up the findings of this subsection, society cannot develop in the original state because human beings do not have any understanding of the common good and because such an understanding is necessary to form societies. More importantly, though, human beings cannot have such an understanding at this point because there is no such understanding to be had: Human beings are completely self-sufficient and hence there are no empirically instantiated examples of human beings living together and cooperating with each other that could give rise to an understanding of the common good. On the Epicurean view, society is not 'required' at this point of cultural development. First, it is not required because living in society is not essential to human nature. And second, it is not required because society does not provide goods that our primitive ancestors could not provide on their own. Only when circumstances change and human nature changes, society comes to be, which happens during the first cultural phase, to which we now turn.

3.3. The First Cultural Phase

At V.1011ff., Lucretius turns to the coming to be of human communities. At this point, a new stage of development is described, one in which moral norms (*mores*) come to be. *Mores* are nothing else than the rules and principles that regulate human behavior in the interaction with other human beings, which is characteristic of life in communities. It is therefore not surprising that justice makes its first appearance at precisely this point in Lucretius' culture story. As we saw in the previous section, circumstances in the

original state did not require the development of society. Let us therefore look closely at what changes from the first to the second phase of societal development so that society can come to be.

Recall that the main hindrance to the formation of society in the original state is that human beings are self-sufficient. Consequently, human beings must not only lose their original self-sufficiency but also require other human beings to make up for their loss. Accordingly, Lucretius opens the section that deals with the development of human communities with precisely such a remark. As we saw above, human beings in the original state are described as tough and enduring and they live the life of hunters and gatherers. Now, by contrast, human beings settle down and consequently their nature changes:

Next they provided themselves with huts and skins and fire, and woman, united to man, went to live in one <place with him. The advantages of cohabitation> were learned, and they saw the birth of their offspring. It was then that human beings first began to become gentle: The use of fire rendered their shivering bodies less able to endure the cold beneath the pavilion of the sky; Venus tamed their strength; and children with their charming ways easily broke down the stern disposition of their parents.¹²⁶

The change from isolated hunters and gatherers to a sedentary family mode of life is surprising because Lucretius does not explain precisely what causes the change from one mode of life to the other. What suddenly made human beings build huts, wear clothing, and establish more lasting unions with the opposite sex that led to the formation

¹²⁶ *Inde casas postquam ac pellis ignemque pararunt / et mulier coniuncta viro concessit in unum / [lacuna?] / cognita sunt, prolemque ex se videre creatam, / tum genus humanum primum mollescere coepit. / ignis enim curavit, ut alsia corpora frigus / non ita iam possent caeli sub tegmine ferre, / et Venus inminuit viris puerique parentum / blanditiis facile ingenium fregere superbum.* Lucretius, *On the Nature of Things* V.1011ff.; Trans. by Smith, modified, emphasis added.

of families? It seems that the transition is missing here; nothing in the description of the original state gives us readers the answer to this question. However, it seems fairly easy to fill in Lucretius' account. Human beings, chancing upon fire and skins and inventing huts, quickly see the advantages such and similar innovations pose. Gradually, they begin to adopt these innovations and make them part of their daily lives. These innovations and changes may initially be independent of one another and not necessitated by each other: They may emerge one after the other and be small and insignificant at first. The pace of the development can thus appear to be rather slow. Eventually a tipping point is reached, though; taken together, certain innovations, which individually altered the state of human beings only insignificantly, lead to bigger changes and ultimately result in a significant transformation of human nature.¹²⁷ Human beings are no longer what they were in the original state but become gentle and tamed, having become accustomed to innovations that make their lives easier.¹²⁸ Constant dripping wears away a stone; this seems to be the meaning of *tum... primum... coepit*.¹²⁹

Note that "advantages of cohabitation" in the passage quoted above is Martin Smith's addition (see also Cyril Bailey who adds "laws of marriage"): the corresponding

¹²⁷ In this context, see Sarkissian 2010 who argues for the doctrine of "situationalism," according to which minor changes in circumstances may have big effects on moral behavior.

¹²⁸ '*Mollescere*' at V.1015 does not mean 'to become weak,' but rather 'to become soft/gentle', as Manuwald convincingly argues: "*mollescere ist nämlich als Gegensatz gemeint zu dem durus genus (vgl. vv. 925ff.), das ein Leben more ferarum (vgl. v. 932) führte. Lexikalisch bedeutet mollescere entweder im wörtlichen Sinne 'an Härte, an Kraft verlieren' oder übertragen in durchaus positivem Sinne 'sanft, freundlich werden' [...]. Sieht man von der Spezialbedeutung 'seine Männlichkeit verlieren' [...] ab, ist mollescere in pejorativen Sinn (moralische Erschlaffung, Verweichlichung) erst spät belegt*" (1980: 56, fn. 212).

¹²⁹ It is interesting to note that the family really has a key place in the development of community according to this view. Children, then, truly function as the 'social glue' that enables the emergence of the families as the basic units of society. Compare this to the role of the household (*oikos*) in Aristotle's *Politics* (I.1252b9ff.).

line in Lucretius' text is missing. However, there are good reasons in favor of Smith's and Bailey's suggestions. Once relationships between the sexes are no longer casual, human beings need to acquire some understanding and, as a result, relationships become sustainable. As "*cognita sunt*" at V.1013 indicates, some intellectual act, some act of learning, takes place at this point of the development.¹³⁰ It seems very likely that this act involves some aspect of human interaction. Given the context of the passage that describes the first long lasting relationships that are being formed, the lacuna probably contained the poem's first instance of human beings developing moral norms in regard to these relationships.

Human nature, then, changes and human beings become gentle and 'softer' according to Lucretius' account. As a consequence, human beings are also no longer self-sufficient as they were in the original state. The main reason that spoke against the establishment of a society therefore falls away. Not being self-sufficient, human beings in this first phase of society have the incentive to unite and form communities. This is the only way to compensate for the new needs that arise.¹³¹

In any case, as soon as the necessity of living with others arises, the issue of what principles and rules regulate this new situation emerges. We already saw above that the more lasting relationships between the sexes call for new knowledge of some kind that pertains to the new way of dealing with each other. Accordingly, in the passage that immediately follows the one quoted above that dealt with the change in human

¹³⁰ Pace Lachmann's suggestion to emend "*cognita sunt*" to "*conubium*."

¹³¹ This account of the origin of the communities recalls the prominent idea, also found in other classical accounts, that human beings are deficient beings and the state is formed out of necessity to fulfill a need. See, for instance, Plato, *Republic* 369b f. and *Protagoras* 321c ff.

nature, Lucretius continues to describe the interaction between the first human beings in the now slowly forming society. And this interaction again includes the emergence of further moral norms, which brings us to one of the most important passages in Lucretius' account of cultural development when it comes to justice:

It was then, too, that neighbors eagerly began to form *amicitiae* one with another, not to hurt or to be harmed, and claimed protection for their children and womenfolk, indicating by means of inarticulate cries and gestures that it is fair or just [*aequum*] that the weak are pitied by everyone. Although it was not possible for concord to be achieved universally, the great majority kept their agreements [*foedera*] loyally. Otherwise, the human race would have been entirely extinguished at that early stage and could not have propagated and preserved itself to the present day.¹³²

Beside the moral norms that arise between men and women (the family), there are also moral norms that arise between neighbors.¹³³ Lucretius calls these moral norms “*amicitiae*.” By this, Lucretius could first mean Epicurean ‘friendships.’¹³⁴ According to such a reading, friendships (understood as “fellowships” rather than intimate bonds between people)¹³⁵ would thus stand at the beginning of the communal life. This would be especially interesting because early modern conceptions of the social contract usually do not accord much significance to the notion of friendship. According to this

¹³² *tunc et amicitiam coeperunt iungere aventes / finitimi inter se nec laedere nec violari, / et pueros commendarunt muliebrique saeculum, / vocibus et gestu cum balbe significant / imbecillorum esse aequum misererier omnis. / nec tamen omnimodis poterat concordia gigni, / sed bona magnaque pars servabat foedera caste; / aut genus humanum iam tum foret omne peremptum / nec potuisset adhuc perducere saecula propago.* Lucretius, *On the Nature of Things* V.1019ff.; Trans. by Smith, modified.

¹³³ The “et...et...” at V.1019ff. may indicate that the formation of ties between neighbors happens at the same time as the family comes into being and men and women form more lasting ties or that one type of relationship comes to being before the other. On either reading, both kinds of relationships in a way stand at the beginning of the genesis of society (see also Westphalen 1957: 34).

¹³⁴ See, for instance, Long 1985: 310.

¹³⁵ See O'Connor 1989: 168.

reading, then, Epicureans would accord political importance to their ‘friendship.’ However, as some commentators point out, ‘*amicitia*’ need not be translated or in fact be understood as ‘friendship.’¹³⁶ ‘*Amicitia*’ can also mean ‘alliance’ and as such be a synonym for ‘*foedus*’, which is used in the same passage quoted above and is a Latin equivalent of the Greek ‘*sunthēkē*.’¹³⁷ As a result, the above passage may just describe how agreements come to be, but not take a stand on how the Epicurean theory of friendship is related to the Epicurean theory of justice.

In any event, Lucretius’ claim that the first alliance between neighbors concerns not hurting and not being harmed (*nec laedere nec violari*) strongly echoes Epicurus’ claim that agreements that are the basis for justice are over “not harming and not being harmed” (*mē blaptēin mēde blaptesthai*).¹³⁸ Yet as I already pointed out in the previous chapter, the subsequent discussion shows that Lucretius not only takes justice to consist of an obligation not to harm and not to be harmed, but also in a positive obligation to act beneficently towards others. Some commentators also argue that Lucretius introduces a second motive, wholly distinct from benefit, for why agreements are formed, namely, pity or compassion for the weak.¹³⁹ Such an assumption is unnecessary, though. The

¹³⁶ See, for instance, Mitsis 1988: 106, fn. 14, Müller 1991: 118f., and Konstan 2008: 89ff. (*pace* Rist 1980: 123).

¹³⁷ See Lucretius, *On the Nature of Things* V.1155 as well as Cicero, *On Ends* I.70

¹³⁸ KD 35. See also KD 31, 32, and 33.

¹³⁹ Westphalen 1957: 34 and 78; Boyancé 1963: 243 *pace* Müller 1972: 42 and fn. 71. See also Diogenes of Oenoanda fr. 3 Smith, in which Diogenes appeals to his love of humanity (*philanthrōpon*) to aid (*epikourein*) foreigners (*zenoi*). One may also think of Rousseau and his account of pity. In the *Second Discourse*, Rousseau argues against Hobbes whom he takes to have a mistaken conception of human beings. Rousseau contends that Hobbes is mistaken in assuming that human beings are originally intent on harming each other; they are rather fair-minded creatures: “*Hobbes n’a pas vu que la même cause qui empêche les Sauvages d’user leur raison [...], les empêche en même temps d’abuser de leurs facultés, comme il le pretend lui-même; de sorte qu’on pourrait dire que les Sauvages ne sont pas méchants précisément, parce*

example of Epicurean friendship, which includes other-regarding elements, but which is firmly rooted in self-regarding utility, is instructive here.¹⁴⁰ The inclusion of compassion, and hence obligations towards others, on this model, can be understood as a variation on the Epicurean response to the issue of how concern for others can be accounted for on purely utilitarian grounds. And there is no reason to admit a second, independent motive, on which Epicurean agents act.

This response becomes all the more attractive when one considers the passage in the light of a debate between Epicureans and Stoics on the doctrine of appropriation (*oikeiōsis*).¹⁴¹ While the details of this originally Stoic doctrine are much disputed,¹⁴² the basic idea behind it is that, according to the Stoics, human beings exhibit a natural tendency to show ‘concern,’ which means that they seek out what is ‘appropriate’ for themselves. This takes two forms. First, there is the tendency to care for one’s own self-preservation (personal *oikeiōsis*) and, second, there is the tendency to care for the well-being of others (social *oikeiōsis*). The exact relationship between the two forms of *oikeiōsis* is unclear in Stoic theory. Perhaps these forms of *oikeiōsis* are completely

qu’ils ne savent pas ce que c’est qu’être bons” (2008 [1753]: 94f.). In fact, Rousseau charges Hobbes to have overlooked a principle common to all human beings, namely, compassion or pity: “*Je parle de la Pitié, disposition convenable à des êtres aussi faibles, et sujets à autant de maux que nous le sommes; vertu d’autant plus universelle et d’autant plus utile à l’homme qu’elle précède en lui l’usage de toute réflexion, et si Naturelle que les Bêtes mêmes en donnent quelquefois des signes sensibles*” (*ibid.*, 95).

¹⁴⁰ I refer the reader to the discussions in Mitsis 1988, Annas 1993, O’Keefe 2001b, Brown 2002, and Evans 2004.

¹⁴¹ In regard to *oikeiōsis* in Lucretius, see especially Pigeaud 1984: 137ff. and Algra 1997. In regard to *oikeiōsis* in Hermarchus, to which I turn in more detail below, see Vander Waerdt 1988. Finally, see also Giusta 1964: I: 265ff. who discusses the cradle argument under the heading of a “*dottrina Epicurea dell’oikeiōsis*.”

¹⁴² On *oikeiōsis*, see, for instance, von Arnim 1926, Philippson 1932, Dirlmeier 1937, Pohlenz 1940, Brink 1956, Pembroke 1996 [1971], Kerferd 1972, Striker 1983, Inwood 1984, Engberg-Pedersen 1990, and Forschner 2008.

distinct; perhaps, though, at least in some Stoic authors, social *oikeiōsis* is understood as an extension of personal *oikeiōsis*. On this model, self-concern is gradually extended to a concern vis-à-vis close family members, neighbors, the community, etc., ultimately leading to social *oikeiōsis* or the concern for the human race as a whole. This amounts to the famous Stoic doctrine of cosmopolitanism.¹⁴³

Fortunately, the details of the Stoic account need not concern us in this context, and so we can turn directly to the Epicureans. The language the Epicureans employ suggests that they are replying to or borrowing from the Stoics. The verb that Lucretius uses in the passage ('*commendo*') is also one of the terms employed by Cicero to render the Greek verb '*oikeiounai*' into Latin.¹⁴⁴ And in a parallel passage in Hermarchus, the

¹⁴³ Besides *On Ends* III, which is quoted above, the key texts for Stoic *oikeiōsis* are Arius Didymus' epitome of Peripatetic ethics (see also the translation in Görgemanns 1983) as well as Diogenes, *Lives* VII.85f. = LS 57A, Plutarch, *On Stoic Self-contradictions*, 1038B = LS 57E and in Hierocles' *Elements of Ethics* as well as the famous 'circles' passage (Stobaeus IV.671.7ff. = LS 57G)

¹⁴⁴ *On Ends* III.16: "Every animal, as soon as it is born (this is where one should start), is concerned with itself and takes care to preserve itself. It favors its constitution and whatever preserves its constitution, whereas it recoils from its destruction and whatever appears to promote its destruction. In support of this thesis, the Stoics point out that babies seek what is good for them and avoid the opposite before they ever feel pleasure or pain. This would not happen unless they valued their own constitution and feared destruction. But neither could it happen that they would seek anything at all unless they had self-awareness and thereby self-love. So one must realize that it is self-love which provides the primary motivation [*simul atque natum sit animal (hinc enim est ordiendum), ipsum sibi conciliari et commendari ad se conservandum et ad suum statum eaque quae conservantia sunt eius status diligenda, alienari autem ab interitu iisque rebus quae interitum videantur afferre. Id ita esse sic probant, quod ante quam voluptas aut dolor attingerit, salutaria appetant parvi aspernenturque contraria, quod non fieret nisi statum suum diligerent, interitum timerent. Fieri autem non posse tut appetere aliquid nisi sensum haberent sui eoque se diligerent. Ex quo intelligi debet principium ductum esse a se diligendo.*]" (Trans. by Woolf). Note that 'social' *oikeiōsis* is discussed later in the text, at III.62ff., and that here Cicero also uses '*conciliare*' as a synonym of '*commendare*.' Finally, it is interesting to note that Lucretius also uses '*commendare*' at V.861, in the context of the 'agreements' with animals. The text would then suggest that guardianship relies on natural affinity between animals and human beings, a point that is also denied by the Stoics.

noun '*oikeiōsis*' is even explicitly used as one of the reasons why human beings should abstain from killing animals:¹⁴⁵

The followers of Epicurus [...] declared that the slaughter of a human being is a sacrilege, and imposed exceptional penalties.¹⁴⁶ Perhaps there is also [*taxa men kai*] a natural appropriation [*oikeiōsis*] of human to human, because of their likeness of appearance and of soul, which inclines them away from readily destroying such an animal as if it were one or other of those it is acceptable to kill. But the main reason [*tēn pleistēn aitian*] for indignation at this act, and its being declared sacrilege, is that it was not beneficial [*mē sumpherein*] for the general organization of life.¹⁴⁷

In other words, given what we know about the dispute concerning the cradle argument in the Epicurean and Stoic schools and about the Stoic complaint against

¹⁴⁵ There is some debate on the question of whether the passage in Porphyry, which is the source for Hermarchus, is a direct quotation from the second head of the Garden or Porphyry's summary. In favor of direct quotation are, for instance, Philippson 1923: 5, Boyd 1936: 188, and Vander Waerdt 1988: 94ff. Against direct quotation are, for instance, Krohn 1921: 5f. and Müller 1972: 74. Accordingly, one may reach different conclusions regarding the use of a single word like "*oikeiōsis*."

¹⁴⁶ That the text religiously sanctions killing (it is declared "*anhosion*") is perhaps surprising and could be thought to be unusual for an Epicurean author. However, given comments in the *Comparetti Ethics* (PHerc. 1251 col. XII.4ff. Indelli and Tsouna), an Epicurean ethical treatise whose author is unknown and that is named after its first editor, this might not be unorthodox: "The many are rather led to right conduct by the laws which threaten with death, and with punishments coming from the gods, and with pains which are considered intolerable, and with the privation of some things which are supposedly hard to procure. This is partly on account of what was said at the beginning, partly because these things threaten men who are foolish and who cannot be persuaded by the true percepts; and the only thing that is achieved through them [that is, the laws] is deterrence for a short period of time [καὶ μὴ ἀλλ[λ]ον εἰς ὀρθ[ο]π[ρ]αξίαν ὑπὸ τῶν νόμων ἄγονται θάνατον ἀνατ[εινομέ]νων καὶ τιμωρία[ς] ἐκ θε[ῶ]ν καὶ πόρους ὡς δυσ[εκπο]νήτους καὶ στρήσε[ις] ἐνίων ὡς δυστορίστων, τὸ μὲν ἐκ τῶν κατὰ τὴν ἀρχὴν εἰρημένων, τὸ δ' ἐκ τοῦ πρὸς ἄφρονος ταῦτ' ἀνατ[είνε]σθαι καὶ μὴ δ[υ]ναμένους ὑπὸ τῶν ἀληθινῶν πειθεσθαι παραγγε[λ]μάτων καὶ μόνον ἐπισχέσεις δι' αὐτῶν γίνεσθαι πρὸς ὀλίγον χρόνον]." See also Schmid 1944: 40f. and Müller 1972: 76 and fn. 166.

¹⁴⁷ Οἱ δὲ ἀπὸ τοῦ Ἐπικούρου [...] φασὶν [...] ἀνόσιον ἐπεφήμισαν τὴν ἀνθρώπου σφάγην καὶ ἀτιμίας οὐ τὰς τυχοῦσας τροσῆψαν. τάχα μὲν καὶ φυσικῆς τιнос οἰκειώσεως ὑπαρχούσης τοῖς ἀνθρώποις πρὸς ἀνθρώπους διὰ τὴν ὁμοιότητα τῆς μορφῆς καὶ τῆς ψυχῆς εἰς τὸ μὴ προχείρως φθεῖρειν τὸ τοιοῦτον ζῶον ὥσπερ ἑτερόν τι τῶν συγκεχωρημένων· οὐ μὴν ἀλλὰ τὴν γε πλείστην αἰτίαν τοῦ δυσχερανθῆναι τοῦτο καὶ ἀνόσιον ἐπιφημισθῆναι τὸ μὴ συμφέρειν εἰς τὴν ὅλην τοῦ βίου σύστασιν ὑπολαβεῖν. Hermarchus, fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.7.1f.; Trans. by Clark, modified.

Epicureanism that it abolishes justice with the denial of *oikeiōsis*,¹⁴⁸ it seems right to suppose that the Epicureans, from an early point on, react to the Stoics by themselves co-opting the Stoic doctrine of *oikeiōsis*.¹⁴⁹ This means that instead of positing a natural affinity towards the self and others as basic, the Epicureans insist that the same results can be obtained by positing an impulse towards what is beneficial is basic. This is especially clear in the Hermarchus passage where “the main reason” for abstaining from killing is benefit, but *oikeiōsis* is added as a secondary reason (“perhaps there is also”). Following Paul Vander Waerdt and others, it therefore seems likely to me that the passages in Hermarchus and Lucretius are evidence for an Epicurean acknowledgment of the importance of explaining other-concern, but on their own terms.¹⁵⁰

¹⁴⁸ Cicero, *On the Laws* I.42f. and *On Ends* III.70f.

¹⁴⁹ See especially Vander Waerdt 1988.

¹⁵⁰ Another matter is how precisely this response to Stoic theory came about. Vander Waerdt argues in his paper that the excerpt in Porphyry shows that Hermarchus was an original thinker. This is *pace* the traditional view of the first head of the Garden after Epicurus. Yet such a suggestion is not without its own problems. See also Roskam 2007: 76ff. Let me give some historical context. Hermarchus and Epicurus were roughly the same age. After Epicurus’ death in 271 BCE, Hermarchus succeeded him as head of the Garden. Generally, Hermarchus is thought to have died around 250 BCE. Given the status of Epicurus in the Garden, Hermarchus thus could have introduced such a significant innovation as the doctrine of *oikeiōsis* without Epicurus’ explicit consent only after 271 BCE and, in fact, such a rather late date would give the Stoics some time to develop their doctrine. In this case, though, one would still have to assume that the *oikeiōsis* doctrine was well-developed before the time of Chrysippus (279-206 BCE), who is generally considered to be the most important early Stoic author. In any case, *On Abstinence* I.7-12 is usually taken to be an excerpt from Hermarchus’ *Against Empedocles* and one can infer from fr. 29 Longo Auricchio (see p. 126f. of her edition of Hermarchus’ fragments) that *Against Empedocles* was written during Epicurus’ lifetime or rather, more precisely, that it was written before 301 BCE (before Epicurus wrote *On Nature* XII). If this date is right, though, Epicurus must have known and endorsed Hermarchus’ ideas about *oikeiōsis*, for otherwise, Hermarchus’ treatise would have been quite heterodox. What is more, *On Nature* XII, incidentally, probably contained Epicurus’ own account of cultural development. This means that even before writing his own culture story in systematic form, Epicurus already had Hermarchus’ account to draw on. This is not to say that Hermarchus did not truly first come up with the idea of integrating a response to the *oikeiōsis* doctrine into Epicureanism, but it means that this must have happened with the explicit endorsement of Epicurus. Alternatively, one might, of course, doubt that *On Abstinence* I.7-12 is really an excerpt from Hermarchus’ *Against Empedocles* (see also the discussion in Longo Auricchio, p. 137ff.) and that it was written after Epicurus’ death. If so, however, we cannot

Be this as it may, at *On the Nature of Things* V.1023, Lucretius for the first time claims that human beings make use of a moral vocabulary or more specifically communicate that something is ‘*aequum*.’ In doing so, human beings communicate that a given course of behavior is morally preferable to another one: In this case, pitying the weak is preferable to not doing so or to other courses of behavior. However, it is unclear what Greek word ‘*aequum*’ translates. It could either translate ‘*dikaion*’ (just) or ‘*isōs*’ (equal or fair).¹⁵¹ In the latter case, justice might have its beginnings in the idea of weighing and determining equal shares. The development of the notion of justice would thus begin with the equal, that is, with situations in which human beings apportion shares. According to this reading, the act of apportioning would be conveyed by simple language, perhaps even exclusively by pointing. In support of this suggestion, Lucretius claims that human beings at this point in the process of cultural development only communicate “by means of inarticulate cries and gestures.”¹⁵² One could then argue that the understanding of justice that primitive human beings have (and that is captured in

be sure that Epicurus’ own account of cultural development did not also include an explanation of fellow-feeling in some way, perhaps modeled on what Epicurus says about friendship elsewhere, and that these ideas greatly informed Hermarchus’ account. Either way, then, it seems difficult to say anything about Hermarchus’ originality on the basis of *On Abstinence* I.7-12, especially since we do not know when it was written or in what respects it differs from Epicurus’ account in *On Nature*. And given the current textual evidence, it also seems difficult to venture a guess regarding the chronology of the debate on *oikeiōsis* that probably took place between the Epicureans and the Stoics.

¹⁵¹ As David Sedley suggests to me in conversation.

¹⁵² For Campbell (2003: 279), “*balbe* here indicates that the setting is that of the origins of language, with the formation of justice made possible by the development of the first efficient communication system which, although primitive and still relying heavily on gesture, is advanced enough to transmit ethical concepts.” Lucretius is thus very optimistic about what can be achieved without complete grasp of language. It especially seems quite daunting that arrangements in regard to the weaker members of society can be made without advanced, that is, fully developed, linguistic capabilities. Surely, human beings can apportion shares without language, but it seems impossible to convey the concept of ‘equal shares’ without such language.

their preconception) gradually evolves over time, and that it is not simple insofar as it presupposes the concept of the equal.

While such a reading has much appeal, it ultimately fails to convince in my opinion. First, in Epicurus or other Epicureans writing in Greek, we do not find the term *'isōs'* in connection with justice. Of course, it is possible that we merely lack the relevant texts. However, it seems unlikely that such a key distinction is only extant in Lucretius. Second, Lucretius uses *'iustum'* once in its technical sense as 'just' at III.950.¹⁵³ And so it is all the more surprising that book V, which contains a discussion of justice and the law does not again use *'iustum'*, but *'aequum'* instead. It thus seems more likely that Lucretius is using 'just' and 'equal,' *'iustum'* and *'aequum'*, as synonyms. This is also confirmed by looking at V.1149 where *'aequum'* is used to describe the laws (*"legibus aequis"*). The context is the final stage of societal development: Here, it does not make sense to say that the laws are merely 'equal' in the sense of a precursor to the full-fledged notion of justice (that is, the *iustum* or *dikaion*). At this point, the laws are 'just' in the full sense precisely because they are in accordance with the preconception of justice, that is, the practical understanding of justice available to agents at the time. In short, then, *'aequum'* must translate *'dikaion'* at V.1023; for the Epicureans, human beings first form agreements about what is just during the first phase of cultural development.¹⁵⁴

Be this as it may, the passage quoted makes clear that the agreements made during this phase of cultural development are not durable. Agreements are kept most of

¹⁵³ The other occurrence is at IV.1241.

¹⁵⁴ On the potentially problematic preexisting standard of *aequitas* at this point in the account, see Mitsis 1988: 106, fn. 15 as well as the reply in Campbell 2003: 254ff.

the time, but – as we will see in light of Lucretius’ later account of the development of civilization¹⁵⁵ – there is no way to sanction infringements at this stage. Here, we see once again Lucretius’ nuanced appreciation of the cultural achievements of this stage: Although it is a deficit of this stage that agreement (*concordia*) is not universal, it must – as Lucretius points out – at least be widespread, for otherwise, humankind as a whole would have died out.¹⁵⁶

In his commentary on *The Nature of Things* V, Gordon Campbell points out that the observation about human beings dying out in Lucretius is surprising because the description of the original state was not at all violent.¹⁵⁷ It therefore seems odd that suddenly violence is so wide spread (even if not ubiquitous). Campbell explains this by referring to game theory and changing evolutionary strategies among human beings:¹⁵⁸ What worked for primitive human beings no longer works for human beings in the first phase of cultural development. Human beings undergo a change in their nature and as a result, there is more violence among them. And this violence needs to be kept at bay,

¹⁵⁵ See V.1152ff.

¹⁵⁶ It is interesting in this context to compare Lucretius’ observations with the description of primitive societies according to Hart (2012 [1961]: 91ff.), since the two accounts are strikingly similar. Hart contends that for there to be a society without courts and legislature that only lives according to “primary rules of obligation,” certain conditions need to be fulfilled. First, the rules themselves must contain provisions according to which members of society do not harm each other. Second, if there is a tension in the society between those who obey the rules and those who free ride, the free riders may not be in the majority. And third, such a model is only applicable to small groups of people, not large-scale societies. The first two points are explicitly enforced by the Epicureans, as should be clear from the above discussion, the third point is not addressed by them. In contrast to Hart, the Epicureans do not distinguish between primary and secondary rules in their theory, which is perhaps not surprising. However, surprisingly, they do not comment in more detail on the transition from small-scale to more large-scale societies, either.

¹⁵⁷ 2003: 254.

¹⁵⁸ *Ibid.*, 258ff.; see also the alternative solutions discussed at 282f.

which is the purpose of the newly formed agreements.¹⁵⁹ However, these are – as we saw – not always kept, and remedying or at least attenuating these injustices will thus be a major task for the second phase of cultural development.

In response to Campbell, one may remark that his criticism presupposes that agreements are not only formed to keep human beings from harming *each other*. As I argued in the previous chapter, this would mean to unduly restrict the content of the agreements. After all, there is much evidence for violence committed by animals and that wild animals are a huge threat to human beings during the early phase of cultural development.¹⁶⁰ A better reading of lines 1025ff. is thus that mankind would die out because some human beings do not always full-heartedly participate in communal measures designed to ward off any kind of attack, which indeed pose a great danger to human beings who now weakened in their natures are even more vulnerable to such threats.

3.4. The Second Cultural Phase

In the second phase of development, what is beneficial and hence just for human beings is set on a more solid footing. It gets codified into laws. This means that agreements become institutionalized and more importantly that enforcement mechanisms and punishments are created, which make agreements binding.

¹⁵⁹ This passage might also be seen as evidence for the fact that Lucretius' tries to cover up the violence of the original state (see also Blickman 1989: 166 who makes the same claim in regard to a different passage). Lucretius needs to reintroduce violent elements in order to motivate the necessity of introducing laws and sanction mechanisms, which are not only a key feature of the Epicurean account, but also of the phenomenal reality. Alternatively, one could also understand Lucretius' comment as a rhetorical overstatement. The comment that *concordia* was not pervasive during the first phase of cultural development would then merely stress that also this state was not complete and that this state of development was not a Golden Age, either. See also Manuwald 1980: 56f.

¹⁶⁰ See also V.988ff.

Consequently, the deficit of the last cultural phase, that agreements are often not kept, is remedied. The development is not linear, though, and in fact it begins with the failure of the first attempts to set up government in the form of kingships:¹⁶¹

And more and more every day those who excelled in intellect and were strong in mind showed the others how to exchange their former way of life for new practices and, in particular, for the use of fire. Kings began to build cities and to choose sites for citadels to be strongholds and places of refuge for themselves; and they distributed gifts of flocks and fields to individuals according to their beauty, strength, and intellect.¹⁶²

A problem in regard to this passage is whether “those who excelled in intellect and were strong in mind “ at V.1107 are also the first kings at V.1109. I take it that this is very likely, since the change in subject between the lines would otherwise be quite odd.¹⁶³ Understood in this way, then, the passage implies that the preeminent men/first kings use their superior capabilities to serve their own interest, not that of the public (see the pronouns *ipsi ... sibi*). The preeminent men thus try to use their preeminence to circumvent the terms of the original contract. They try to create special privileges for themselves: They order cities and citadels to be built in order to have a safe residence. And this place of refuge is then used as a power basis in order to amass other privileges.

¹⁶¹ I skip lines 1028-1104 in which Lucretius describes how human beings acquired language and learned to use fire. Target of both these discussions is probably Platonic account: first, the theory of language in the *Cratylus* and an account of the origin of fire as presented in the myth of Prometheus in the *Protagoras* (320c ff.).

¹⁶² *Inque dies magis hi victum vitamque priorem / commutare novis monstrabant rebus et igni, / ingenio qui praestabant et corde vigeant. / condere coeperunt urbis arcemque locare / praesidium reges ipsi sibi perfugiumque, / et pecudes et agros divisere atque dedere / pro facie cuiusque et viribus ingenioque.* V.1105ff.; Trans. by Smith, modified.

¹⁶³ See also Hermarchus in Porphyry, *On Abstinence* I.10 (quoted below).

The attempt to usurp power does not succeed, though. According to Lucretius, the initial kingships fail because the interests of all are not sufficiently taken into account.¹⁶⁴ In the process of accruing power, the kings use their wealth to persuade and deceive the many. As Lucretius writes, “no matter how much physical strength and beauty people possess, they follow in the train of the rich.”¹⁶⁵ However, such a deception of the many is not successful for long. Strife and power struggles very soon result. These lead to the dethronement of the first kings.¹⁶⁶ This experience makes people aware of the necessity of introducing the rule of law:

At length some of them taught the others to create magistracies and to establish ordinances, so that they would want to use laws. The human race, utterly weary as it was of leading a life of violence and worn out with feuds, was the more ready to submit voluntarily to the restraint of laws and stringent ordinances. The reason why people were sick and tired of a life of violence was that each individual was prompted by anger to exact revenge more cruelly than is now allowed by just laws.¹⁶⁷

¹⁶⁴ A parallel passage in Epicurus is KD 7: “Some wanted to become reputed and admired, thinking that they acquire security from other human beings in this way. Therefore, if the life of those [human beings] is secure, then they have received Nature’s good. However, if it is not secure, they do not possess that which they desired from the beginning according to what is naturally appropriate [“Ἐνδοξοὶ καὶ περιβλεπτοὶ τινες ἐβουλήθησαν γενέσθαι, τὴν ἐξ ἀνθρώπων ἀσφάλειαν οὕτω νομίζοντες περιποιήσεσθαι. ὥστε εἰ μὲν ἀσφαλὴς ὁ τῶν τοιούτων βίος, ἀπέλαβον τὸ τῆς φύσεως ἀγαθόν· εἰ δὲ μὴ ἀσφαλὴς, οὐκ ἔχουσιν οὐ ἕνεκα ἐξ ἀρχῆς κατὰ τὸ τῆς φύσεως οἰκεῖον ὠρέχθησαν.” Trans. mine. See also KD 6: “In order not to fear <other> human beings, there is the natural good of rule and kingship, with which one is possibly able to procure this <fearlessness> [“Ἐνεκα τοῦ θαρρεῖν ἐξ ἀνθρώπων ἥν κατὰ φύσιν ἀρχῆς καὶ βασιλείας ἀγαθόν, ἐξ ὧν ἂν ποτε τοῦτο οἶός τ’ ἢ παρασκευάζεσθαι].” Trans. mine.

¹⁶⁵ *divitioris enim sectam plerumque secuntur / quam lubet et fortes et pulchro corpore creti.* V.1115f.; Trans. Smith.

¹⁶⁶ *Ibid.*, V.1136ff.

¹⁶⁷ *inde magistratum partim docuere creare / iuraque constituere, ut vellent legibus uti. / nam genus humanum, defessum vi colere aevom, / ex inimiciis languebat; quo magis ipsum / sponte sua cecidit sub leges artaque iura. / acrius ex ira quod enim se quisque parabat / ulcisci quam nunc concessumst legibus aequis, / hanc ob rem est homines pertaesum vi colere aevom.* *Ibid.*, V.1143ff.; Trans. by Smith, modified.

In other words, for Lucretius, the rule of law emerges as the result of a process that heavily involves trial and error and the recognition of what is best *faute de mieux*.¹⁶⁸ The emergence of law is thus not a goal-directed process and even those who have intellect are prone to errors and thus to ‘forgetfulness’ when it comes to what is most beneficial to society as a whole. In fact, it is interesting that Lucretius does not argue that because the preeminent men fail, all should decide together what is best for society as a whole. On the contrary, it is again preeminent men who give the laws after the first kingships fail. Thanks to their intellectual prowess, these men are more mindful of what benefits all than the first kings were. In the passage above, the use of the verb ‘teach’ (*doceo*) emphasizes this point. In contrast to the previous phase of cultural development, when all human beings directly agreed on what is beneficial, this phase is no longer characterized by a joint effort of all. Instead, the hallmark of the *logismos*-phase is that distinct individuals are the driving force behind development, namely, those who have superior intellectual capacities. The majority of the population seems to be left out. Although *all* human beings have some capabilities to grasp the ‘basic moral vocabulary’ in the first cultural phase (after all, this capability is part of their nature and a prerequisite

¹⁶⁸ Strictly speaking, the passage talks both about laws (*leges*) and ordinances (*iura*). According to standard usage of Latin legal vocabulary, *ius* is a broader term, encompassing all kinds of moral norms, written and unwritten, while *lex* is narrower and refers to written law. However, both terms can also be used as synonyms. If Lucretius used the terms as distinct in meaning, he would claim that the new sanction mechanisms helped both codify written laws as well as the (unwritten) moral norms in society, also helping the latter to more pervasiveness. This is difficult to grasp in my opinion. In the case of norms, societal reprimanding can be effective to enforce them. In this vein, it might be effective to reprimand agents in regard to certain behavior, for instance, to shout at them to enforce a social norm. But it seems surprising why such a way of reprimanding agents was not available in the previous stage of societal development. After all, the problem of the first cultural phase is that there are no sanction mechanisms in place to create pervasive adherence to the law and that such pervasiveness can only come about by the punishments that are set down in conjunction with the law. It seems more likely to me, then, that Lucretius is using *lex* and *ius* as a hendiadys to express the same idea: codified law. Epicurus, writing in Greek, had no way of distinguishing *lex* and *ius*. In Greek, the word *nomos* covers both the meaning of moral convention and law, both written and unwritten.

for society to function), not all have the ability to teach others and lead the way to introducing new ways of life.¹⁶⁹ In order to do this, superior intellectual capabilities are required. These, Lucretius reasonably seems to assume, are not distributed in the same way as the basic ability to get along with each other and form basic alliances. Therefore, in the second phase of the development, some preeminent individuals are the principal agents of change.

Yet, as I already remarked in the previous chapter, it would be wrong to think that the many play no role whatsoever in establishing the rule of law. The many concur with the laws that are given by their own will (*sponte sua*), having instrumental reasons to do so.¹⁷⁰ While Lucretius does not use the word ‘agreement’ in this context, the process of law-giving nevertheless has the form of a kind of agreement, namely, between those who give the laws and those who decide that it is right to follow them.

Be this as it may, the intervention of reasoning (*logismos*) at this late point of the development of culture also brings about some problems for the account as a whole. As Cole points out,¹⁷¹ one specifically wonders how human beings were able to attain an

¹⁶⁹ After all, not everyone in Epicureanism has the capability of becoming a Sage. See fr. 226 Usener.

¹⁷⁰ Lucretius, *On the Nature of Things* V.1147. In this context, see also the following passage in Hermarchus: “From the outset, no force was used to establish any of the laws, written or unwritten, which are still in use and are suited for handing on: the people who use them also agree on them [Οὐδὲν γὰρ ἐξ ἀρχῆς βιαίως κατέστη νόμιμον οὔτε μετὰ γραφῆς οὔτε ἄνευ γραφῆς τῶν διαμενόντων νῦν καὶ διαδίδοσθαι πεφυκότων, ἀλλὰ συγχωρησάντων αὐτῷ καὶ τῶν χρησαμένων].” Hermarchus, fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.8.1.; Trans. by Clark. Pace Farrington 1953: 334 *et passim*. It is true that the few (*partim*, Lucretius, *On the Nature of Things* V.1143) introduce the laws, but it does not follow that they “imposed” (Farrington) their laws on the many. The laws are successfully introduced in Lucretius because the many voluntarily accept them. As a consequence, Farrington’s evaluation of law and the preference for the first cultural phase over the second cultural phase is mistaken.

¹⁷¹ 1990 [1967]: 70ff.

understanding of justice during the first phase of cultural development if human beings at the time did not possess reasoning. Consider Hermarchus' discussion of how laws against killing other animals are introduced:

Some of the brightest people of that time, keeping in mind that they themselves abstained from killing because this is useful for security, reminded others what would result from their association with each other, so that abstaining from their kin they would safeguard the community which was working for the individual security of each. Separating themselves out, and doing nothing to injure those who had gathered in the same place, was useful not only for excluding animals of other kinds, but also for dealing with human beings who came to do harm. For a time, then, they held back from their kinsman inasmuch as he was entering the same community for providing necessities and was making some contribution to both the purposes mentioned [that is, repelling threats from animals as well as from other human beings]. But as time went on and reproduction greatly increased, and other kinds of animals (and their dragging away of victims) had been driven out, some people acquired a rational analysis [*epilogismos*] of what was beneficial for their sustenance of each other, not just a non-rational memory [*alogon mnēmē*].¹⁷²

Again, note first that for Hermarchus, too, laws are introduced by preeminent individuals ('some of brightest people of that time'), not by everyone, confirming that laws for the Epicureans are a matter of a few preeminent lawgivers, not of everyone alike. More importantly, though, note that having the capacity of 'rational analysis' (*epilogismos*) is in the above passage contrasted with having the capacity of 'irrational memory' (*alogos mnēmē*). On the assumption that the intensifier '*epi*' does not make *epilogimos* radically different from *logismos*, it follows that human beings during the first

¹⁷² Διαμνημονεύοντες δέ τινες τῶν τότε χαριστάτων ὡς αὐτοί τε ἀπέσχοντο τοῦ κτείνειν διὰ τὸ χρήσιμον πρὸς τὴν σωτηρίαν, τοῖς τε λοιποῖς ἐνεποίουν μνήμην τοῦ ἀποβαίνοντος ἐν ταῖς μετ' ἀλλήλων συντροφαῖς, ὅπως ἀπεχόμενοι τοῦ συγγενοῦς διαφυλάττωσι τὴν κοινωνίαν, ἥ συνήργει πρὸς τὴν ἰδίαν ἐκάστου σωτηρίαν. Οὐ μόνον δὲ χρήσιμον ἦν τὸ χωρίζεσθαι μηδὲ λυμαντικὸν ποιεῖν μηδὲν τῶν ἐπὶ τὸν αὐτὸν τόπον συνειλεγμένων πρὸς τὸ τῶν ἀλλοφύλων ἐξόρισμα ζώων, ἀλλὰ καὶ πρὸς ἀνθρώπους τοὺς ἐπὶ βλάβῃ παραγινομένους. Μέχρι μὲν οὖν τινος διὰ ταύτην ἀπέσχοντο τοῦ συγγενοῦς, ὅσον ἐβάδιζεν εἰς τὴν αὐτὴν κοινωνίαν τῶν ἀναγκαίων καὶ χρεῖας τινὰς παρείχετο πρὸς ἑκάστην τῶν εἰρημένων· ἐλθόντος δὲ ἐπὶ πλέον τοῦ χρόνου καὶ τῆς δι' ἀλλήλων γενέσεως μακρὰν προηκούσης, ἐξεωσμένων δὲ τῶν ἀλλοφύλων ζώων καὶ τῆς παρασπάρσεως, ἐπιλογισμὸν ἔλαβον τινες τοῦ συμφέροντος ἐν ταῖς πρὸς ἀλλήλων τροφαῖς, οὐ μόνον ἄλογον μνήμην. Hermarchus fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.10.2ff.; Trans. by Clark, modified.

stage of moral development (during which *logismos* is absent) merely acquire the preconception of justice by means of memory – in a way that does not significantly involve reason (*alogos*). I will take up this issue in more detail in chapter 7 when I deal with how individuals come to have an understanding of the just.

In any case, it would be rash to conclude that the newly introduced laws are a hands-down triumph of justice. During the first cultural phase, human beings develop a notion of the *aequum*, but the problem is that justice cannot triumph because it is not pervasive enough; agreements are not always kept. During the second cultural phase, the sanction mechanisms that accompany the law help establish this pervasiveness. From now on, infringements against moral norms are prosecuted. This limits feuds and makes sure that there are clear ways of deescalating conflicts. But this positive aspect of the law is accompanied by the following downside according to Lucretius:

Ever since that time [when laws were introduced] fear of punishment has poisoned the blessings of life. Violence and hurt¹⁷³ enmesh all those who practice them: they generally recoil on the wrong doers, and it is not easy for those who by their actions violate mutual pacts of peace to pass a placid and peaceful life; for even if their crime goes undetected in heaven and on earth, they are bound to fear that it will not remain hidden for ever. And indeed many people, so it is said, by talking in their sleep or in the delirium of disease, have betrayed their own guilt and disclosed deeply hidden matters and their misdeeds.¹⁷⁴

¹⁷³ The word that is translated as hurt here is '*iniuria*', which could also mean 'injustice.' In any event, the point of the passage, however, is not that justice and its opposite came to be when the laws were introduced. We already saw that justice came to be at an earlier stage in the process of societal development.

¹⁷⁴ *inde metus maculat poenarum praemia vitae. / circumretit enim vis atque iniuria quemque / atque unde exortast, ad eum plerumque revertit, / nec facilest placidam ac pacatam degere vitam / qui violat factis communia foedera pacis. / etsi fallit enim divom genus humanumque, / perpetuo tamen id fore clam diffidere debet; / quippe ubi se multi per somnia saepe loquentes / aut morbo delirantes protraxe ferantur / et celata <mala> in medium et peccata dedisse.* V.1151ff.; Trans. by Smith.

In other words, a new kind of fear makes its appearance at this point of the process of societal development.¹⁷⁵ It is true that the laws can first be said to offer advantages. For instance, those who abide by the law are surely better off than in a society without laws, for it must be better for them to live in a society free from random violence. Likewise, those whose ‘blessings are poisoned by the laws’ precisely seem to be those who do not abide by the law; those who abide, by contrast, can be thought to have nothing to fear.¹⁷⁶ Yet laws introduce fear into the world, and if the goal of Epicurean philosophy is to remove fear, the laws, on the Epicurean view, cannot, as David Konstan rightly observes, be an overall good thing, even if they yield some advantages.¹⁷⁷ After all, one may also imagine that a good Epicurean may be wrongfully convicted and so unjustly subjected to the law and its provisions. Likewise, since the discussion of gods and religion in connection to fear immediately follows the discussion of the fear that results from punishments associated with the laws, it seems that the fear connected with the laws is importantly linked with the fear connected with the gods.¹⁷⁸ In this vein, Philodemus observes that there were different ways stories of the gods were introduced into the world.¹⁷⁹ First, there is the way in which individuals tell stories about

¹⁷⁵ See especially Konstan 2008: 79ff. and *passim*; see also Blickman 1989: 173ff. as well as Lenz 2011: 99.

¹⁷⁶ Manuwald 1980: 59, fn. 219 denies that there is anything negative about the law. On the role of fear in regard to obeying the law, see also chapter 5.

¹⁷⁷ 2008: 112ff. See also Müller 1972: 72f. and Blickman 1989: 175.

¹⁷⁸ See V.1161ff.; Konstan 2008: 117 and Perlli 1967: 222.

¹⁷⁹ “... securing mere security [*asphaleia*] for themselves from the multitude or the latter from each other, but each leaving to everyone else what is evident [regarding the true nature of the gods]. But the others of course fabulous and terrible stories [about the gods], and did not seem to be introducing these things either in the same way as their predecessors or as the sources of security [*sōtēria*] to governments [ξεργαζόμενοι τὴν ἀσφάλειαν ἢ τὴν ἑαυτῶν παρὰ τῶν πολλῶν ἢ τὴν ἐκείνων παρ’ ἀλλήλων, ἀλλὰ τὸ φαινόμενον ἕκαστοι πᾶσιν ἐπιτρέποντες· [οἱ] δὲ μύθους μὲν εἰσηγον ἀμέλει καὶ τερατειάς, οὔτε δὲ τοῖς πρότερον ἐδόκουν εἰκότα ταῦτ’ εἰσφέρειν οὔτε

the gods to procure security. Second, there is the way stories are told for the sake for the government. And third, there is the way that is not further specified, but that seems more pernicious than the first and second way. While this description is not explicitly linked to phases in human development and it is in fact unclear whether Philodemus is making a developmental claim at all in distinguishing these three ways stories about the gods are told, the first way is reminiscent of the first kings in Lucretius who usurp power to be safe and the second way of what the law-givers could have done in order to make sure that their laws are more widely obeyed. If this is true, then, indeed, the introduction of laws, via the fear it introduces into the world, paves the way for the introduction of the gods, and hence one of the most important fears in Epicureanism, which should make clear that the introduction of the law in Epicureanism cannot be all positive.¹⁸⁰

σωτηρίας αἴτ[ια] πολιτείας]” Philodemus, *On Piety* 2151ff. Obbink; Trans. by Obbink, modified. A similar account is also found in Hermarchus: The first law-givers first try to frighten those who do not obey with severe (secular) punishments (fr. 34 Longo Auricchio = *On Abstinence* I.8.2). Later, they also add a religious dimension to keep the many from breaking the law (*ibid.* I.9.4).

¹⁸⁰ The connection between laws and divine punishments is also made in the so-called Comparetti Ethics [= PHerc 1251]. This text is very critical of the feasibility of restraining individuals by the laws in general, though. While the Epicureans seem to acknowledge that some individuals will be restrained from wrong-doing by the gods, they estimate that this number is very low. See col. XII.4ff. Indelli and Tsouna as well as Diogenes of Oenoanda’s “Theological Physics-Sequence”: “For some say that this doctrine [that is, that the gods are not to be feared] does not benefit our life, for human beings even in the present situation act wrongly so far as they possibly can; that if, however, they are also released from their fears derived from the gods, they will act completely wrongly, and in consequence the whole [of life] will be confounded. However, [people of such behavior] are even now those who do not fear the gods ([let] this [be] agreed; for if they feared the gods, they would not do wrong). But, as for the others, I declare that those of them who grasp the arguments based on nature are not just on account of the gods, but on account of their having a correct view of the nature of desires and pains and death (for indeed invariably and without exception human beings do wrong either on account of fear or on account of pleasures), and that ordinary people on the other hand are just, in so far as they are just, on account of the laws and the penalties, imposed by the laws, hanging over them. But even if some of their number are conscientious on account of the gods, rather than on account of the laws, they are few; only just two or three individuals are to be found among great segments of multitudes, and even these are steadfast in acting justly [φασὶ γὰρ τινες μὴ συμφέρειν τῷ βίῳ τὸ δόγμα τοῦτο. Τοὺς γὰρ ἀνθρώπους καὶ ἐπὶ τοῦ παρόντος μὲν ἀδικοπραγεῖν ἐφ’ ὅσον δὴ ποτε· ἂν μέντοι καὶ τῶν ἐκ θεῶν φόβων ἀπολυθῶσι, τελέως ἀδικοπραγήσειν, ἐγ δὲ τοῦτου συνχυθήσεσθαι τὸν ὅλον [βίον. τοιοῦτοι] μὲν καὶ ν[ῦν] πε[φύ]κασι[ν] οἱ μὴ [δ]ε[δ]οικότες τοὺς θεοὺς

3.5. Summary

In this chapter, I discussed the Epicurean account of cultural development with a focus on justice and the law. I showed how the elements of the Epicurean theory of justice that I identified in chapter 2 work together diachronically. In doing so, I mainly focused on the culture story in *On the Nature of Things* V. I argued that the Epicurean theory should be understood as a proto-social contract theory and, in accordance with early modern theories of the social contract, the Epicurean account can roughly be divided into three parts: (1) the description of the original state, (2) a first *physis*-phase of cultural development, in which human beings unite, and (3) a second *nomos*-phase of cultural development, in which human beings form legal and political states. These parts correspond to different degrees of establishment and human knowledge of justice and the law. While no justice and laws exist in the original state, the first phase of development features justice without laws. Finally, the second phase of development features both justice and laws.

In the remainder of the chapter, I then discussed each of the three phases. In regard to the original state, I showed that human beings are not originally social beings for the Epicureans and that the first human beings have no understanding of justice or the law. Consequently, justice and law also do not exist at this point in the cultural

([συ]νκεχωρημένον [εἴη τ]οῦτο· εἰ γὰρ ἐδεοίκεσαν, οὐκ ἂν ἡδίκουν)· [τ]ῶν δ' ἄλλων ἀποφαίνομαι τοὺς μὲν φυσικῶν ἀπτομένου<ς> λόγων μὴ διὰ τοὺς θεοὺς εἶναι δικαίους, διὰ δὲ τὸ βλέπειν [ὁ]ρθῶς τὰς τε ἐπιθυμίας τίν' ἔχουσιν φύσιν κα[ὶ] τὰς ἀληθόνας καὶ τὸν θάνατον (πάντη τε γὰρ πάντως ἢ διὰ φόβον ἢ διὰ ἡδονὰς ἀδικοῦσιν ἄνθρωποι), τοὺς δ' αὖ χυδαίους διὰ τοὺς νόμους εἶναι δικαίους, ἐφ' ὅσον γέ εἰσιν δίκαιοι, καὶ τὰς ἀπὸ τούτων ἐπικρεμαμένας αὐτοῖς ζημίας. ἀλλὰ κἂν ὥσιν τινες ἐν αὐτοῖς διὰ τοὺς θεοὺς εὐγνώμονες, οὐ διὰ τοὺς νόμους, ὀλιγοὶ δὲ οὗτοι· καὶ δυ' ἢ τρεῖς μόνις κατὰ μεγάλας πληθῶν ἀποτομὰς εὕρισκόμενοι, βεβαίως οὐδὲ οὗτοι διακαιοπραγοῦσιν]" (NF 167 ll.4ff. + NF 126 Smith; Trans. by Hammerstaedt and Smith, modified). See also discussion on obeying the law in chapter 5.

development. However, there is also no need for them at this point; human beings are completely self-sufficient creatures.

In regard to the first phase of cultural development, I showed that society becomes necessary for the Epicureans after human nature changes: a sedentary lifestyle, family ties, and technological achievements affect human beings and change their nature. I suggested that this is a slow and gradual transition, but one that ultimately gives rise to communities. This takes the form of agreements over not harming and not being harmed, which, in Lucretius at least, in a second step get expanded to include the weak. I showed that at this stage of societal development, moral norms such as the just (*aequum*) first come into being.

In regard to the second phase of cultural development, I focused on the way that laws are formed. Lucretius account clearly distinguishes between the genesis of justice (in the first phase of development), which is logically, metaphysically, and temporally prior, and the genesis of law, which is logically, metaphysically, and temporally posterior. According to Lucretius, laws first come into being as the result of the efforts of a few preeminent men. This also distinguishes genesis of law from genesis of justice: While it seems all contracting parties formed agreements with each other to create justice, law is the product of some bright minds (albeit the many also recognize what is lawful *sponte sua*).

4. CLASSIFYING THE EPICUREAN THEORY OF JUSTICE AND LAW

In the two previous chapters, I set out the basic Epicurean view: In chapter 2, I described the basic elements of the Epicurean theory of justice and the law, and, in chapter 3, I discussed the Epicurean theory from a diachronic perspective as a kind of social contract theory. In this chapter, I will build on these results and discuss what metaethical implications this account of justice has. Furthermore, I will classify the Epicurean theory of justice and law from the perspective of contemporary legal philosophy.

In the first section of this chapter, I will argue that the Epicurean theory of justice is a naturalistic theory (4.1.). In doing so, I will again turn to KD 31:

The naturally just is a *sumbolon* of benefit in regard to not harming each other and not being harmed.¹⁸¹

I already commented on the word '*sumbolon*' in chapter 2 and so here I will focus on the idea that there is something "naturally just" (*to tēs phuseōs dikaion*) on the Epicurean view.¹⁸² I will explain what this means by situating the Epicurean theory of justice and law in the *nomos-phusis*-debate, a debate that reaches back to the 5th

¹⁸¹ Τὸ τῆς φύσεως δίκαιόν ἐστι σύμβολον τοῦ συμφέροντος εἰς τὸ μὴ βλάπτειν ἀλλήλους μηδὲ βλάπτεσθαι. Trans. mine.

¹⁸² Related to this discussion is the question of whether society is natural for the Epicureans. I discussed this question in detail in chapter 3, arguing that in Epicureanism, society is not natural for human beings in the original state, but that it is natural for human beings once they have left the original state.

century BCE.¹⁸³ What the debate is exactly about is difficult to say. As a first approximation, however, it can be seen as the precursor of the nature-nurture-debate, which deals with the issue of which features in human beings are genetically and which are culturally determined. The verb '*nomizō*' in Greek means to think, believe, or practice. Consequently, things thought, believed, or practiced by human beings are in this debate said to be 'by convention' (*nomō(i)*). Likewise, *nomoi* are 'culturally determined' human conventions, customs, or laws. '*Phusis*', by contrast, is usually translated by 'nature,' in the sense of an essential and permanent entity, and so is the opposite of what is by convention.

It would be a mistake, though, to leave it at such a characterization of the *nomos-phusis*-debate since it oversimplifies what is really at stake. The reason is that the words '*nomos*' and '*phusis*' were used in a variety of different ways in different contexts in the Classical and Hellenistic periods. For instance, they were used in regard to such different subject matters as language, perception, or cultural norms.¹⁸⁴ In these contexts, the pair *nomos/phusis* can be fittingly translated by the pairs prescriptive/descriptive, appearance/reality, artificial/natural, or contingent-accidental/necessary, since the terms are respectively used to draw normative, epistemological, ontological, and modal distinctions.¹⁸⁵ This makes it difficult to distill one single issue that the *nomos-phusis*-debate is about and so to characterize the debate as a whole accurately. In the case of justice, however, the main issue seems to be whether justice is a natural entity in the

¹⁸³ See above all Heinimann 1945, Pohlenz 1953, Guthrie 2003 [1971]: 55ff., Kerferd 1981: 111ff., and McKirahan 2010: 405ff.

¹⁸⁴ See Plato's *Cratylus* and *Theaetetus* as well as Herodotus' *Histories* III.38.

¹⁸⁵ McKirahan 2010: 407. The debate on justice includes normative, epistemological, and ontological aspects that are not always neatly distinguished. This is especially clear in Polystratus' treatise *On Irrational Contempt* (XXI.17ff. Indelli).

world or whether it is only an artificial, that is, man-made, one.¹⁸⁶ I will argue in this chapter that Epicurean theory of justice occupies a sophisticated kind of middle position: Epicurean justice is artificial in that it is the product of human agreement, but natural in that it has a firm basis in what is beneficial, which is not a matter of agreement, but a fact about the world.¹⁸⁷ Since the firm basis of justice rests on facts about the world, I will argue that the Epicurean conception of justice is naturalistic. To do so, I will explain in more detail what I mean by ethical naturalism and discuss how Epicurean naturalism differs from another kind of naturalism, namely, Aristotelian naturalism (4.1.).

Having described justice in this way, I then turn to characterizing further the relationship between justice and the law on the Epicurean view in the second section of this chapter (4.2.). Here, I will draw on the vocabulary of modern analytical philosophy of law. While modern legal terminology is necessarily anachronistic when applied to the Epicureans, it will nevertheless allow me to better characterize the Epicurean view and so improve on previous attempts of classification. Scholars who have discussed the Epicurean theory of justice and law have either understood it as a kind of natural law

¹⁸⁶ In the same vein, I take it that Polystratus' *On Irrational Contempt* shows that the main objection that the Epicureans see themselves confronted with is whether human-made constructs such as the agreements that lead to the existence of justice really merit obedience. In this text, Polystratus argues that it does not follow from the fact that the fine (*to kalon*) and the shameful (*to aischron*) and things like them (*ta toiauta*) exist by convention (*nomo(i)*) that they do not truly exist (*kath' alētheian einai*), as an unidentified opponent claims. While the just (*to dikaion*) is not mentioned explicitly in the Polystratus' text, it is, on my reading, ontologically in the same domain (see the more detailed discussion in chapters 6 and 7). Accordingly, even if the just is not mentioned in *On Irrational Contempt*, one could imagine that philosophers of other ancient schools raised a similar objection against the Epicurean theory of justice, a theory that heavily relies on agreements and so on convention. On Polystratus, see Philippson 1909, Isnardi Parente 1971, Indelli 1977, Adorno 1980, Bett 1994: 144ff., Alberti 1996, Warren 2002: 142ff., Giovacchini and Lemaire 2014, and Indelli's 1978 edition (including a commentary).

¹⁸⁷ See also Müller 1972: 104.

theory or a kind of legal positivism.¹⁸⁸ I agree with scholars who hold the latter view, but I will stress in my reading that nature plays a bigger role in Epicurean theory than is sometimes thought (even if the view is overall not a natural law theory). On my reading, the Epicureans claim that content of the law may (and in fact ideally does) not only include moral principles, that is, what is just, but also may (and in fact ideally does) include a natural fact about the world, namely, what is beneficial.¹⁸⁹

4.1. Epicurean Naturalism

Let us begin with the examination of the naturalness of justice in Epicureanism. First, as I have argued in previous chapters, the Epicureans defend a kind of social contract theory, according to which justice and the laws come about by different kinds of agreements. One would therefore expect Epicurean justice and laws to be man-made and artificial. After all, agreements are artificial: On the Epicurean view, they come about as human artifacts, and there is no justice without beings who form an agreement. One may therefore *prima facie* find it surprising to read in KD 31 that there is something naturally just (*to tēs phuseōs dikaion*) on the Epicurean view.

What '*to tēs phuseōs dikaion*' exactly is has regularly puzzled scholars. The first problem concerns the strange genitive.¹⁹⁰ In the context of the *nomos-phusis*-debate,

¹⁸⁸ Yet if the terms 'legal positivism' and 'natural law theory' are used, they are usually not precisely defined.

¹⁸⁹ This is not to say that what is beneficial or what is just puts restraints on the law. A law, for the Epicureans is a social fact for the Epicureans, and a law does not cease to be a law if it is no longer just or no longer beneficial. However, if a law is no longer beneficial and just, it ceases to be a good law. In other words, one must distinguish the ontological account of what law is (as an agreement a social fact) from the success conditions of the law (e.g. a good or just law).

¹⁹⁰ See Bollack 1975: 353f. for an overview of the different ways of translating the maxim.

one would rather expect the dative ‘*phusei*.’¹⁹¹ Given the habitual usage of the dative ‘*phusei*,’ the claim that there is something “just by nature” would then mean that justice is natural in the world in the sense of a non-artificial thing, which does not vary according to circumstances or agents. Accordingly, if KD 31 reads that there is something “just by nature” (*to phusei dikaion*), this maxim would express the idea that justice on the Epicurean view exists as a non-artificial thing that does not vary according to circumstances or observer. Yet given everything that was said about Epicurean theory in the previous chapters, such a reading of KD 31 would completely contradict all results: Justice really is an agreement for the Epicureans, and so arises anew in a different way from place to place. Consequently, it would be very strange if KD 31 asserted that justice exists *phusei* in the sense just described.

To explain the genitive, then, it is helpful to consider a parallel case in other Epicurean texts.¹⁹² In KD 7, for example, Epicurus writes about “what is naturally good [*to tēs phuseōs agathon*].”¹⁹³ This is usually taken to mean the following. It is not that there are things that are naturally good in the sense of being once and for all good for the Epicureans (as on the above reading of the dative ‘*phusei*’), but rather that given how the world is set up, a certain thing is good at this moment. The world could be structured differently and the things that are good now would not be good then, but at least now they are good. In other words, following Anthony Long and David Sedley, I

¹⁹¹ Another alternative is to understand the genitive as equivalent to ‘*kata phusin*’ (according to nature), as Goldschmidt and Arrighetti translate. These translators understand the topic of the maxim to be the nature of justice (and so reverse genitive and nominative in the phrase). For discussion, see Voelke 1982 and Morel 2000: 396.

¹⁹² The following is indebted to Müller 1972: 89ff.

¹⁹³ For similar passages, see *Letter to Menoeceus* 133, KD 15, and GV 25. KD 7 also mentions “what is naturally appropriate (*to tēs phuseōs oikeion*).”

suggest to translate the genitive '*phuseōs*' literally as 'nature's,' and to keep in mind that nature for the Epicureans here does not refer to a permanent essence, but rather to a *natural process* that reflects the changing structure of the world.¹⁹⁴ In short, nature's justice is the justice as it is found in the world rather than the essence of justice.

Against such a non-essentialist reading, one might be tempted to adduce a passage in Philodemus. It reads: "Some things are just or unjust by nature [*phusei*] and never change, others vary according to locality and condition."¹⁹⁵ At first sight, this sentence suggests that there are things that are just by nature on the Epicurean view in the sense that I suggested should be ruled out, namely, in the sense of a kind of justice that exists as an essential nature, independently of agents or circumstances. In response to such a reading, one first has to note that the text is part of those Epicurean texts preserved on Herculanean papyri. As a result, there are several lacuna in the text and the reading of the sentence strongly depends on additions by a modern editor, Siegfried Sudhaus. However, even if one accepts the reading offered by Sudhaus, a more literal translation than the one by Harry Hubbell that I quoted is: "... to/by those things¹⁹⁶ able to have the status of the just and unjust by nature [*phusei*],¹⁹⁷ so as to never change in this [regard], but the opposites that of the opposites,¹⁹⁸ others change

¹⁹⁴ Accordingly, Verde rightly observes: "il concetto epicureo di 'natura,' in un certo senso, non è una nozione stabile, immobile ma energicamente e attivamente dinamica, per questo, a mio parere, occorrerebbe parlare di 'processo naturale' più che di natura" (2010: 215).

¹⁹⁵ ...τοῖς δυν[αμένοις τὴν] φύσει δίκαιου καὶ ἀδίκου χώ[ρ]αν ἔχειν, [ὥστ' ἐν τοῦ]τῳ κατὰ μη[θὲν ἀλλάτ]τειν, τὰ δ' ἐναντία τὴν τῶν ἐναντίων, ἕνια δὲ κατὰ τόπους καὶ περιστράσεις. *Rhetoric* I.259 col XXIV.26ff. Sudhaus. Trans. by Hubbell.

¹⁹⁶ The quotation begins with a definitive article and a participle in the dative. Since the beginning of the sentence is lost, it is unclear how the text that has come down to us connected to the lost part of the sentence.

¹⁹⁷ For the same expression, see KD 37 on manuscripts B and F: "ἔχει τὸ τοῦ δίκαιου χώραν."

¹⁹⁸ A verb needs to be supplied here from the part of the sentence that is missing.

according to locality and condition.” In short, the sentence does not at all present the clear contrast between just things by nature and justice that are not by nature, which is falsely suggested by Hubbell’s translation. Admittedly, the passage clearly claims that there is something able to have the status of just by nature (*phusei*), but without more context, it is impossible to say what – if anything – this implies about something being just by nature in Epicureanism.¹⁹⁹ In fact, it is not even clear if Philodemus is speaking *propria voce* in the passage. Consequently, the reading of nature I have suggested above, namely, that there is no justice by nature, understood as a permanent essence, is thus not threatened by this passage in Philodemus.

On the reading I have outlined, the just is not by nature in the sense of a permanent essence. The Epicureans adopt a procedural understanding of nature. However, this still leaves the Epicurean conception of nature in KD 31 quite indeterminate, and so a closer look at the second half of the maxim may be helpful to determine what exactly nature in the case of justice consists in. In the second half, nature’s justice is connected with benefit, which means that on the Epicurean view, being beneficial is the nature of justice. What is beneficial, in turn, on the Epicurean view, can change with time and circumstances, but it is not itself the product of an agreement. At any given time, what is beneficial is thus a ‘natural’ fact based on the determinate, objective condition of the world.²⁰⁰ Accordingly, the entirety of facts about

¹⁹⁹ In this context, note that Demetrius Lacon spends some time clarifying the expression ‘by nature,’ distinguishing three different senses in which it can be used. *PHerc* 1012 col. LXVII Puglia. I take this to be a later development in the school, though, in response to criticism from rival philosophers. This could suggest that Demetrius is employing a different conception of ‘by nature’ than Epicurus did.

²⁰⁰ The Epicureans are very aware of the problem that a theory of justice that allows anything to be just is bound to be arbitrary. Accordingly, while it is possible to reject what is just and beneficial within a given community and introduce something else in its stead, this seems to be a rather silly undertaking. After all, others will not adopt such an idiosyncratic understanding and

the world at a certain point in time determines what will be beneficial at that time. This means that anthropological, sociological, psychological, and political facts about human beings, zoological facts about possible predators and prey, geographical facts about the terrain, and physical facts about the laws of nature, among many other facts, all help determine at any given moment in time what things are beneficial. As a result, there will never be only one thing that is beneficial, but rather a plethora of things. Which of these things, insofar as they relate to the dealings of human beings with each other, that is, are potentially in the domain of justice, are actually just at a certain time and in certain circumstances is then determined by the fact that human beings agree on them. In short, on the Epicurean view, facts about the world provide the foundation for justice: At any given time, what is beneficial is based on an objective, determinable state of affairs, and it can receive the status of being just, when this benefit pertains to the dealings with other people (is specific to a certain domain) and human beings have agreed on it. As a result, there will always be more things that are beneficial than the things that are just, that is, sanctioned by agreements, on the Epicurean view. Put again differently: While the Epicureans emphasize the importance of agreements in their theory of justice, they also place agreements on a firm basis, namely, nature itself (understood as what is beneficial), which mitigates the fear that Epicurean theory is *only* artificial and as such arbitrary.²⁰¹

That the firm basis of the Epicurean theory of justice is what is beneficial (understood as a natural fact about the world), on my reading, qualifies the Epicurean

such a scenario will only show that an agent who introduces a new understanding will now be less safe, operating with a radically different assumption – and have to deal with the consequences. See Philodemus, *Rhetoric* I.257f. col. XXIII.16ff. Sudhaus.

²⁰¹ See also Philippsen 1910a: 293ff. and Konstan 2008: 102.

theory of justice as naturalistic. There are several competing kinds of ethical naturalism in contemporary ethics and any definition of naturalism is bound to be controversial.²⁰² Nevertheless, I will adduce two different definitions of ethical naturalism in what follows and argue that on each of them, the Epicurean view is naturalistic. According to the first definition of ethical naturalism I would like to consider, the distinguishing feature of ethical naturalism is that moral entities are either themselves natural properties, that is, properties that can be investigated by natural science, or stand in some relationship to these properties.²⁰³ This is definitely true of Epicurean naturalism as I set it out above. After all, the just, a moral entity, is explained in terms of the beneficial, a non-moral entity. Understood in this way, Epicurean naturalism is first and foremost a rejection of metaphysical and theological explanations in the ethical domain. In contrast to an approach according to which moral values are appealed to in reference to an invisible measure (Solon) or *logos* (Heraclitus, the Stoics) or a non-sensible Form (Plato), the Epicurean approach thus explains what is moral by drawing only on the empirical investigation of nature.²⁰⁴ In fact, physical principles are even used to offer a bottom-up etiological explanation of culture in Epicureanism. Recall also in this context that Lucretius' culture story is the final part of Lucretius' account of the physical creation of

²⁰² See, for instance, Sturgeon 2006, Dowell 2013, and Lenman 2014.

²⁰³ McDowell 2013: 3532f.

²⁰⁴ *“Mit der dargelegten Konzeption von Rechtsentwicklung und Staatenbildung haben Epikur und seine Schüler das Recht von jeder metaphysischen Begründung abgelöst. Die stoische Vorstellung von einem den gesamten Kosmos durchdringenden und lenkenden Weltengesetz wird ebenso scharf zurückgewiesen wie die platonische Überzeugung von der Existenz einer transzendenten Idee der Gerechtigkeit. Für Epikur gibt es keine allgemeine und absolute Gerechtigkeit (δικαιοσύνη) jenseits der partikulären Gemeinschaft, da das Recht aus einem zwischenmenschlichen Vertragsakt hervorgeht und jede Vertragsgemeinschaft ‘Recht’ und ‘Unrecht’ individuell, d.h. gemäß ihrer spezifischen Auffassung vom gemeinsamen, wechselseitigen Nutzen, bestimmt.”* Scholz 1998: 263f. On the Epicurean criticism of the Platonic Form of justice, see also chapter 6.

the world in book V of *On the Nature of Things*. In other words, on the Epicurean view, justice is not only dependent on benefit as a natural fact, but ethics as a whole is etiologically dependent on physics. Consequently, moral phenomena can be explained in the terms of non-moral phenomena, on the Epicurean view. This does not mean that all explanations in Epicurean ethics should or do start with the physical domain.²⁰⁵ However, it does mean that the mode of investigation in Epicurean ethics is modeled after the mode of investigation in physics, which implies that Epicureans can always draw on the study of the natural world to refute metaphysical or religious assumptions that are to the detriment of a naturalistic ethical theory.²⁰⁶

It is instructive here to contrast Epicurean ethical naturalism with the naturalism that is usually attributed to Aristotle, namely, a kind of biological naturalism.²⁰⁷ According to this view, one must first know what kind of beings human beings are before one can determine what their excellence or virtue (*aretē*) is. And, at least, in its traditional form in Aristotle, this means that one must rely heavily on the study of biology to determine what is virtuous for human beings, which in a post-Darwinian age presents some problems for contemporary Virtue Ethicists who want to adopt an Aristotelian framework. By contrast, the Epicurean view is naturalistic in explaining moral entities in terms of non-moral entities, but it does not primarily rely on biology. Instead, it more broadly draws on the

²⁰⁵ The discussion of Epicurean pleasure in the *Letter of Menoeceus*, for instance, probably does not exclusively rely on an understanding of atomistic principles, even if it could also be explained with the help of atomistic principles. See Mitsis 1988: 46, fn. 93 *pace* Glidden 1980: 184. By contrast, in order to grasp the arguments for the claim that death is nothing to us, some knowledge of Epicurean physics is inevitable.

²⁰⁶ This observation also helps explain why the study of nature and its phenomena occupies such a prominent place within Epicureanism, although research into natural phenomena is not done for its own sake, but for the sake of achieving an ethical end.

²⁰⁷ See Annas 2005 and Hursthouse 2013.

study of nature, that is, physics or science more generally. In fact, in contrast to Aristotle who composed a wealth of biological writings, Epicurus seems to have subsumed biology under his study of the natural world (physics) and so not to have devoted separate treatises to the study of animals or plants.²⁰⁸ It may thus be helpful to consult a second definition of naturalism that distinguishes Epicurean naturalism from its Aristotelian counterpart. This version of ethical naturalism again stresses that entities in the ethical realm are not fundamentally different from entities in the physical realm and that ethical investigation should be modeled after scientific explanation. According to Nicholas Sturgeon, who advances such a view, an ethical view is naturalistic if it fulfills two conditions, one metaphysical, the other epistemological:

(a) that such ethical properties such as goodness of persons, character traits, and such things as the rightness and wrongness of actions, are natural properties of the same general sort as the properties investigated by the sciences, and (b) that they are investigated in the same general way that we investigate those properties.²⁰⁹

To show that the Epicurean view fulfills these two conditions will be the object of subsequent chapters. I will argue in more detail in chapter 6 that there is no indication that the just is a property for the Epicureans that is not “of the same general sort” as the properties studied in physics and other sciences. And I will show in chapter 7 that human beings come to have an understanding that something is just in the same way that they come to have an understanding that the cat is black. In other words, my discussion of naturalism ends with a promissory note. Nevertheless, I hope to have made plausible in this section that despite its commitment to agreements, the Epicurean theory of justice is

²⁰⁸ See the list of works attributed to him by Diogenes, *Lives* X.27f.

²⁰⁹ 2006: 92. As Sturgeon goes on to note, much in the definition depends on what counts as a natural property. According to Sturgeon, this at the very least entails a rejection of the supranatural.

a naturalistic theory. More importantly, though, I have argued that justice on the Epicurean view can be explained in non-ethical terms and that benefit, as a non-ethical fact plays a key role for understanding what it means to be just.

4.2. Epicurean Legal Positivism

Having situated the Epicurean theory in the *nomos-phusis*-debate and described the Epicurean view as a kind of naturalism, I will next turn to classifying the Epicurean theory in terms of the vocabulary of modern analytic philosophy of law. In doing so, I will focus on the relationship between justice (or morality) and law in Epicureanism and I will begin with a short discussion of ‘natural law theory’ and ‘legal positivism’ as the two main theories that discuss this relationship. Unfortunately, what exactly the defining difference between natural law theory and legal positivism is, is a contentious matter and the topic of the major debates of the 20th century in general jurisprudence such as the one between H.L.A. Hart and Richard Dworkin. In fact, there are three competing theses that are used by different authors to distinguish legal positivism from natural law theory: (1) the separation thesis, (2) the pedigree thesis, and (3) the content thesis. In what follows, I will discuss these three theses briefly, and so develop a framework with which I can categorize the Epicurean view more accurately.

First, according to the separation thesis, legal positivism differs from natural law theory, in that the latter, but not the former, argues that there is a necessary connection between what is moral and what is legal. Hart asserts in his seminal work *The Concept of Law*, for instance, that “we shall take Legal Positivism to mean the simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of

morality, though in fact they have often done so.”²¹⁰ While this thesis is perhaps the most famous thesis that is associated with legal positivism, it is rather unpopular among legal positivists themselves who reject it as insufficient, confused, or straightforwardly false.²¹¹ One may first notice that the thesis is ambiguous in scope. It could either mean that (A) it is necessarily the case that there is no connection between law and morality or that (B) it is not necessarily the case that there is a connection between law and morality. Yet this problem aside, there are even some legal positivists (namely, inclusive positivists) who reject both readings of the separation thesis. Likewise, it seems that some natural law theorists could accept the separation thesis, at least under the reading that their view does not entail the claim that unjust laws do not count as laws, which is often falsely attributed to them.²¹²

A more helpful way to describe the difference between natural law theory and legal positivism is therefore the so-called pedigree thesis. According to this thesis, legal positivism differs from natural law theory in positing that the existence of law depends on social facts, not on its merit.²¹³ The idea here is that human beings make the law and that this is the sole criterion of determining what law is and what it is not, and this thesis is usually taken to be the one that most legal positivists accept and which is used to distinguish natural law theory and legal positivism.

²¹⁰ 2012 [1961]: 185. See also Hart 1958.

²¹¹ See, for instance, the discussion in Green 2008. The following discussion is also indebted to the comments in Green 2009.

²¹² See Kretzmann 1988.

²¹³ The classical statement of this thesis is found in John Austin (1998 [1832]: 184): “The existence of law is one thing; its merit and demerit another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry.”

However, there is also a problem in regard to the pedigree thesis. In saying that the existence of law depends on social facts, the pedigree thesis leaves open whether morality can still factor into the law. Take, for instance, §4302 of the Pennsylvania Penal Code, which prohibits incest. This law against incest is a social fact insofar as lawmakers in the state of Pennsylvania who were mandated by the people created it. Yet whether the law came to be as a social fact or not, its content is arguably importantly formed by morality. It is not *merely* that people came together and created the law, but in making the law lawmakers and the people of the state had certain ideas about moral values that made its way into the written law. Put differently, the pedigree thesis is a thesis about the origin of law, but it leaves open whether content of the law may or may not include moral ideas.

Let us therefore consider a third and final thesis, the so-called content thesis. In current scholarship, in the wake of Dworkin's criticisms of Hart's ideas,²¹⁴ there is some debate among legal positivists about this thesis, which asserts that the law may incorporate moral facts into its content. Some scholars reject the thesis and are as a result called exclusive or hard positivists, whereas others embrace the thesis and are labeled inclusive or soft positivists.²¹⁵

Having mapped out the terrain in this way, let us return to the Epicureans. First, it is noteworthy – especially in the ancient context – that law and justice (which, again, I take here to be the stand-in for morality as a whole) for the Epicureans are conceptually distinct entities, as the distinction between the laws or customs (*nomoi*) and the just (*to*

²¹⁴ See above all Dworkin 2013 [1977].

²¹⁵ Hart 2012 [1961], Waluchow 1994, Coleman 2001 are some of the most prominent defenders of inclusive positivism, while Raz 1994 and Shapiro 1998 are prominent defenders of exclusive positivism.

dikaion) in their writings clearly shows.²¹⁶ This is worth pointing out because such a distinction is not at all self-evident.²¹⁷ In fact, an example for this confusion in what may be a pre-Epicurean text is *Hippias Major* 284d, where Socrates notes that “Then, when those who attempt to set down laws miss the good, they have missed the lawful and the law as well.”²¹⁸ Of course, in the context of the *Hippias Major*, Socrates’ pronouncement may be rhetorical, and due to the nature of Platonic dialogues, especially one about which there is no consensus of whether it can be reliably attributed to Plato, the claim does not need to be understood as Plato’s own view. Be this as it may, the passage just quoted shows that in distinguishing between what is lawful and what is just, the Epicureans avoid the fault of crudely running together two ideas that should be conceptually separated but that are not always kept apart.

Since I already dismissed the separation thesis as inadequate, let me begin the classification of Epicurean theory by taking a look at the pedigree thesis. It states that the existence of law depends on social facts. As I have shown in previous chapters, the laws on the Epicurean view are created by preeminent individuals and then recognized by the many. Furthermore, this means that laws are social facts; they arise anew in different places and at different times. The Epicureans thus clearly support a version of the pedigree thesis and, for this reason, I suggest that we may aptly describe their view as a kind of legal positivism. However, it is interesting to note that in contrast to modern

²¹⁶ Alberti 1995.

²¹⁷ In modern languages such as German and French, the conceptual distinction between justice and the laws is more difficult to make than in English in that ‘*Recht*’ and ‘*droit*’ can both refer to what is just and what is lawful. (I leave aside that *Recht* and *droit* may also refer to the idea of a right, which can create even more confusion.) In Greek, by contrast, the distinction is as clear as it is in English.

²¹⁸ Ὅταν ἄρα ἀγαθοῦ ἀμάρτωσιν οἱ ἐπιχειροῦντες τοῦς νόμους τιθέναι, νομίμου τε καὶ νόμου ἡμαρτήκασιν.

legal positivists, the Epicureans also argue that the existence of *justice* (not only that of law) depends on social facts, as I argued above. After all, justice is said to be a kind of agreement. In other words, Epicurean theory does not stop at the analysis of the law. Indeed, most of the *Principal Doctrines* deal with justice and the law; the expression “what is acknowledged as just (*nomisthenta dikaia*)”, which is used in these maxims, can equally refer to the agreements that lead to justice and to those agreements that lead to the existence of the law. Modern legal positivism, by contrast, does not address issues of justice directly. The main reason for this is that legal positivism is a legal theory, not an ethical or political theory. Standing in the tradition of Kelsen’s “pure” theory of law, modern legal positivists *pace* natural law theorists are usually committed to investigating the law while setting aside moral issues.²¹⁹ This does not mean that metaethical assumptions do not also find their way into their theories. Yet they never explicitly take a stand on justice as Epicurean theory does. So while Epicurean theory clearly posits the social origin of law and so is very close to modern legal positivism, it also offers a theory of justice and connects ethics and legal philosophy in a way that is methodologically uncharacteristic of modern legal positivist approaches.

This brings us to the content thesis. It states that the law may incorporate moral facts as its content. As I argued above, a law on the Epicurean view is (ideally) a just law and this means that the law is (ideally) beneficial. What is beneficial, in Epicureanism, in turn, is a natural fact about a state of affairs in the world. In short, then, according to the Epicurean view, whether a law is just is reducible to the natural fact of whether it is beneficial. This means that while Epicurean theory allows that moral facts can become the content of the laws, these moral facts by themselves are irrelevant in terms of their

²¹⁹ See Kelsen 2008 [1934].

explanatory role; what matters ultimately is the category of benefit, which determines what is moral. Nevertheless, it seems appropriate to say that the Epicureans accept a version of the content thesis. After all, laws on the Epicurean view ideally include considerations of what is just or more precisely about what is beneficial. The Epicurean version of positivism, then, (ideally) incorporates moral facts into the law qua what is beneficial. Accordingly, the Epicurean theory of justice and law is most fittingly described as a kind of inclusive positivism.

At this point, let me emphasize again that on the Epicurean view a law that is not just does not cease to be a law. Such a law merely ceases to meet the success conditions for laws; it is no longer a good, that is, beneficial, law. In other words, while natural facts about the world ideally play an important role for agents when they form agreements and make laws, agreements and laws are above all social facts on the Epicurean view. As the result, the Epicureans are not committed to the claim that benefit or justice put a constraint on what counts as a law (as natural law theories typically do), but only to the claim that the law may incorporate what is beneficial and what is just into its content.

Now, despite the fact that the Epicurean theory of law is positivistic and its emphasis lies on the fact that agreements arise in different places and at different times, Epicurean theory also emphasizes that there may be things that at any given moment will be 'universally' just, that is, just for everyone everywhere.²²⁰ These things are not just

²²⁰ Usener 1892: 444, Philippson 1910a: 298, Strauss 1965 [1953]: 107ff., and Brown 2010 [2009]: 191 and fn. 41. Brown rightly points out that one major hindrance to such all-encompassing justice and law is that Epicurus himself claimed that only certain people have the ability to become Sages (see Diogenes, *Lives* X.117 and fr. 226 Usener as well as KD 32 and Philodemus, *On the Gods* III col. XIV Diels). This is true insofar as this comment implies that certain people will never be capable of forming agreements. However, it is false insofar as the agreements of justice are not about anything random whatsoever that a select few have agreed

for everyone everywhere without qualification, though, but rather they all happen to be just at this time, given that they are beneficial. In the same vein, Diogenes of Oenoanda even champions a kind of cosmopolitanism, observing that “while the various segments of the earth give different people a different country, the whole compass of this world gives all people a single country the entire earth, and a single home, the world.”²²¹ Since Diogenes writes in the 2nd century CE, it is sometimes assumed that this text is rather the product of his eclecticism and so rather the result of the dominance of Stoic philosophy than really a position that Epicurus himself could have articulated.²²² Yet there is no need to dismiss Diogenes’ testimony as altogether un-Epicurean. While there is indeed no reason to assume Epicurus held cosmopolitan ideas, there is some reason to think that his theory can accommodate the idea that there can be things that are just for everyone everywhere at a given moment in time.

upon, but supposedly what is beneficial for all (from an anthropocentric point of view). Conversely, note that even on a natural law theory like Aquinas’, there is room for deviation from the universal law: “But with reference to the particular conclusions of practical reason, neither is the truth or rectitude the same for all, nor is it equally known even to those for whom it is the same. Now, it is right and true for all to act according to reason. From this principle, however, it follows as a kind of particular conclusion that deposits should be returned. And this is true in the majority of cases, but it may happen in a particular case that it would be harmful, and, consequently, unreasonable to return a deposit, for instance, if someone requested it in order to attack his country [*Sed quantum ad proprias conclusiones rationis practicae, nec est eadem veritas seu rectitudo apud omnes; nec etiam apud quos est eadem, est aequaliter nota. Apud omnes enim hoc rectum est et verum, ut secundum rationem agatur. Ex hoc autem principio sequitur quasi conclusio propria quod deposita sint reddenda. Et hoc quidem ut in pluribus verum est, sed potest in aliquo casu contingere quod sit damnosum, et per consequens irrationabile, si deposita reddantur, puta si aliquis petat ad impugnandam patriam.*]” (*Summa Theologiae* I-IIe, q. 94, a. 4; Trans. by Henle, modified; see also the similar case that is discussed at *Republic* 331b ff.). In other words, just as natural law theory is not committed to the claim that what is lawful is the same everywhere, legal positivism is not committed to the claim that what is lawful is different everywhere.

²²¹ καθ’ ἐκάστην μὲν γὰρ ἀποτομήν τῆς γῆς ἄλλων ἄλλη πατρίς ἐστίν, κατὰ δὲ τὴν ὅλην περιοχὴν τοῦδε τοῦ κόσμου μία πάντων πατρίς ἐστίν ἢ πᾶσα γῆ καὶ εἷς ὁ κόσμος οἶκος. Fr. 30 Smith; Trans. by Smith.

²²² See the discussion in the introduction to Smith’s edition of Diogenes of Oenoanda (139f.).

In KD 36, for instance, Epicurus distinguishes between a general aspect (*kata to koinon*) and a peculiar aspect (*kata to idion*) when it comes to justice: “In its general aspect, justice is the same for everyone, for it is a kind of mutual benefit in the dealings of men with one another: but with reference to the individual peculiarities of a country or any other circumstances the same thing does not turn out to be just for everyone.”²²³ This could be understood in at least two ways.²²⁴ First, it could mean that there is truly a difference in principle between general and peculiar justice. According to such a reading, there are some norms that are so general that they apply to all people in all circumstances and then there are other peculiar norms that do not apply to all people in all circumstances and there is no connection between the two sets of norms. It would thus follow that if human beings keep to the most general norms (justice in its general aspect), it is possible that all people everywhere share these general norms making ‘universal justice’ possible.²²⁵

²²³ κατὰ μὲν <τὸ> κοινὸν πᾶσι τὸ δίκαιον τὸ αὐτό, συμφέρον γάρ τι ἦν ἐν τῇ πρὸς ἀλλήλους κοινωνίᾳ· κατὰ δὲ τὸ ἴδιον χώρας καὶ ὅσον δὴ ποτε αἰτίων οὐ πᾶσι συνέπεται τὸ αὐτὸ δίκαιον εἶναι. Trans. by Bailey, modified.

²²⁴ See especially Müller 1972: 99ff. and Bollack 1975: 376.

²²⁵ The Epicureans would thus be closely following a distinction made by Aristotle (see Philippson 1910: 295 as well as Müller 1972: 99). At *Nicomachean Ethics*, V.7.1134b18ff., Aristotle distinguishes between natural and legal justice: “Of the politically just, one part is natural, the other part is legal. The natural part is that which has the same force everywhere and does not seem this or that to someone. The legal part, by contrast is that which from the beginning does not differ in one way or another, but when it has been laid down, it differs, for instance, the release on the receipt of a ransom of a mina, or the sacrificing of a goat but not two sheep, and further the laws that are passed in regard to particular cases, for instance, sacrificing to Brasidas, and the provisions of decrees [Τοῦ δὲ πολιτικοῦ δικαίου τὸ μὲν φυσικόν ἐστι τὸ δὲ νομικόν, φυσικὸν μὲν τὸ πανταχοῦ τὴν αὐτὴν ἔχον δύναμιν, καὶ οὐ τῷ δοκεῖν ἢ μὴ, νομικὸν δὲ ὃ ἐξ ἀρχῆς μὲν οὐδὲν διαφέρει οὕτως ἢ ἄλλως, ὅταν δὲ θῶνται, διαφέρει, οἷον τὸ μὴ λυτροῦσθαι, ἢ τὸ αἶγα θύειν ἀλλὰ μὴ δύο πρόβατα, ἔτι ὅσα ἐπὶ τῶν καθ' ἕκαστα νομοθετοῦσιν, οἷον τὸ θύειν Βρασίδα, καὶ τὰ ψηφισματώδη].” Trans. mine. In the same vein, Aristotle distinguishes between positive laws and customs on the one hand and natural law on the other hand at *Rhetoric* I.13.1373b4ff.: “[By the two kinds of law,] I mean peculiar and general law. By ‘peculiar law’ I mean the law defined by individuals with regard to themselves, and some of this law is unwritten and some of it is written. By ‘general law’, by contrast, I mean the law that is in accordance with nature [λέγω δὲ

On the alternative reading, there is no difference in principle between general and peculiar justice. According to this reading, general justice and particular justice are not two kinds of justice, but rather different ways of realizing the same kind of justice. In this vein, for instance, refraining from harm and not being harmed is beneficial and thus just for everyone everywhere, but the ways in which this is realized is different from place to place: While some communities, for instance, consider incarceration as a sufficient deterrent and have one understanding of what exactly constitutes harm, others consider community administered physical punishments as more fitting and have a varying understanding of what constitutes harm.

Both readings explain how there is general justice for the Epicureans. However, the former reading threatens to eliminate the idea that really all justice for the Epicureans is conventional, and it falsely assumes that conventionality of law is at odds with its universality. Yet such an assumption is unwarranted. For instance, one may imagine certain behaviors to be conventionally sanctioned yet still be – in some form or another – universally accepted by all human beings. Concrete examples are difficult to give because it means taking a stance on what counts as a conventionally sanctioned behavior and on what role nature plays in the sanctioning process. Nevertheless, one could perhaps imagine restrictions on social roles and on sexual relationships to be conventionally sanctioned and yet find that these sanctions occur everywhere in one form or another. If this is right, then there is no reason to separate the two aspects of justice and the latter reading is to be preferred.

νόμον τὸν μὲν ἴδιον, τὸν δὲ κοινόν, ἴδιον μὲν τὸν ἑκάστοις ὠρισμένον πρὸς αὐτούς, καὶ τοῦτον τὸν μὲν ἄγραφον, τὸν δὲ γεγραμμένον, κοινὸν δὲ τὸν κατὰ φύσιν].” Trans. mine.

KD 36 aside, there is another piece of evidence for the claim that something may be just for everyone everywhere at a given time, namely, in Hermarchus. Although the text discusses what is lawful, not what is just, it claims that there are things that are legislated that will fit everyone alike and that it is these things a skillful legislator should seek out:

people likewise go wrong about what is general and what is peculiar. Some fail to distinguish *the things legislated that fit everyone alike*: some disregard them, thinking they are among the 'indifferents',²²⁶ others take the opposite view and think that laws which are not universally beneficial to be beneficial everywhere.²²⁷

Since the criterion that bestows merit on the laws is the same as the one that bestows merit on justice, namely, the beneficial, it seems to follow that if there is something that fits everyone in legislation, then there will also be something that fits everyone in regard to justice. The passage explicitly invokes universal benefit (*ta katholou sumpheronta*) as the good-making feature of laws.²²⁸ While this could be taken to refer to a single community only, I see no reason why it needs to be. Consequently, it seems that universal benefit will also be a good-making feature of universal justice. It is

²²⁶ This is an allusion to the Stoic doctrine that only virtue is choice-worthy in itself and that everything else is either a preferred or a dis-preferred indifferent. See, for instance, Meyer 2008: 141ff.

²²⁷ διαμαρτάνουσιν ἐν πολλοῖς τῶν τε κοινῶν ὁμοίως καὶ τῶν ἰδίων. Καὶ γὰρ τὰ παραπλησίως ἐφαρμόττοντα νομοθετήματα πᾶσιν οὐ καθορῶσί τινες, ἀλλ' οἱ μὲν τῶν ἀδιαφόρων δοξάζοντες εἶναι παραλείπουσιν, οἱ δὲ τὴν ἐναντίαν δόξαν ὑπὲρ αὐτῶν ἔχουσιν, καὶ τὰ μὴ καθόλου συμφέροντα πανταχοῦ τινες. Porphyry, *On Abstinence* I.12.2f.; Trans. by Clark, modified and emphasis added; on this passage, see especially Osborne 2007: 207ff.

²²⁸ That laws are 'universally beneficent' in this passage cannot only refer to the fact that laws have a general aspect, just as there was a general aspect of justice. First, the technical vocabulary used in the two passages is different (*koinon* vs. *katholou*). And second, the thing legislated as just (*nomotethēmata*) refers to actual things that were set down and not abstract principles of law-giving.

thus wrong to dismiss the idea that there cannot be things that are just for everyone everywhere at a given moment on the Epicurean theory of justice and law.

I have now completely set out my reading of Epicurean justice and the law. To conclude the chapter, let me briefly review the most important contributions in scholarship and explain how my reading differs from them. In his two influential 1910 articles, Robert Philippson identifies Epicurus as a participant in the *nomos-phusis* debate and then claims that Epicurus was an advocate of natural law theory.²²⁹ In support of this reading, Philippson cites the usage of the word ‘nature’ in KD 31, which we already explained differently above. Furthermore, Philippson adduces Polystratus’ *On Irrational Contempt for Common Conceptions* to show that entities that exist relative to something (*pros ti*) exist by nature (*phusei*).²³⁰ Unfortunately, I cannot argue for this claim in more detail here, but I take this to be a misunderstanding of the meaning of a difficult passage in Polystratus, the point of which is rather that *pros ti* entities can exist by convention and simultaneously be said to exist truly. So while Philippson deserves great merit for being one of the first modern scholars to discuss the Epicurean theory of justice and law in a scholarly text, his discussion is overall inaccurate and does not capture the Epicurean position well.

Reimar Müller and Victor Goldschmidt, by contrast, who argue in their respective books in the 1970s that justice is primarily a matter of agreement for the Epicureans,

²²⁹ 1910a: 292. See also the remarks in Falchi 1902 who develops a similar reading of the Epicurean conception of justice, but whose work has been completely neglected by subsequent scholars writing on the topic.

²³⁰ “Eine Bestätigung unserer Auffassung wird uns Polystratus geben, der gegenüber der Behauptung seiner Gegner, die bestehenden Sittlichkeitsbegriffe seien als künstliche, nicht als natürliche zu betrachten, weil sie überall verschieden seien, beweist, dass durch die Relativität die Natürlichkeit und Gültigkeit von Begriffen nicht aufgehoben werde” (Philippson 1910a: 294).

remedy this defect in Philippson.²³¹ They both stress the aspect of agreement and hence of conventionality in Epicurean theory in their respective accounts, which I take to be the correct reading of the Epicurean position on justice and the law. In this vein, Müller, for instance, points out that what is naturally just cannot be meant in the sense of something that is just in itself without recourse to human posits.²³² However, on such reading, the ‘impurity’ of Epicurean theory (*pace* Kelsen’s ideal of purity in legal theory) does not receive sufficient attention and neither of these two authors clearly defines what they mean by natural law theory or legal positivism. I correct these shortcomings in my readings of the Epicurean conception and so importantly qualify the ‘conventionalist’ readings offered by Müller and Goldschmidt.

Finally, Antonina Alberti’s 1995 contribution is the most recent attempt to make sense of the naturalness of justice in Epicureanism. While her article deserves much praise for emphasizing the importance of distinguishing between justice on the one hand and the laws on the other hand,²³³ Alberti first mischaracterizes the debate in scholarship when it comes to the naturalness of justice and confounds Goldschmidt’s and Müller’s views.²³⁴ More importantly, though, she fails to address appropriately the ‘impurity’ of the

²³¹ Although Philippson on the one hand and Müller and Goldschmidt on the other hand also emphasize different parts of Epicurean theory, it does seem to me that their disagreement about the Epicurean position is substantial (*pace* Indelli 1978: 47).

²³² “*Im Sinne der Antithese φύσει-νόμῳ kann also Epikur nicht den natürlichen Ursprung des Rechts behauptet haben, wie Philippson annahm. Epikurs Begriff des ‘naturgemäßen’ oder ‘natürlichen’ Rechts darf nicht im Sinne eines ‘Naturrechts’ verstanden werden, das ‘an sich’, unabhängig von bewußten und spezifischen Festlegungen des Menschen existiert und absolute Gültigkeit hat*” (Müller 1972: 93; see also Goldschmidt 1977: 25ff.).

²³³ But see also the remarks in Philippson 1910a: 299.

²³⁴ Alberti 1995: 170f. and 179f., fn. 30. While Goldschmidt indeed reduces justice to positive law, as Alberti claims, Müller is often more careful. Goldschmidt is also more ready to speak of the Epicureans as legal positivists (1981: 309), but Müller, for instance, writes: “*Wenn Philippson und andere ihn [Epicurus] als Vertreter einer Naturrechtsauffassung in Anspruch genommen haben, so muß hervorgehoben werden, daß dieser Begriff des ‘Naturrechts’ bei Epikur nur in einem Sinn*

Epicurean conception and, while on the right track in drawing on Hart's work, also fails to characterize the Epicurean conception of law as a kind of inclusive legal positivism, as I do here.

4.3. Summary

In this chapter, I discussed the Epicurean theory of justice from a metaethical perspective and then classified the Epicurean theory of law in terms of the vocabulary of modern analytic philosophy of law. I began by situating the Epicurean theory in the ancient *nomos-physis*-debate, claiming that the Epicurean view occupies a kind of middle position between the view that the laws are completely man-made or artificial and the view that they are completely natural. I then argued that the most important aspect of the Epicurean theory of justice from a metaethical perspective is that justice, an ethical fact, can be reduced to benefit, a natural fact about the world, and argued that this classifies the Epicurean view as naturalistic. After having worked out the metaethical understanding of justice in Epicureanism, I next drew on the vocabulary of modern analytic philosophy of law in order to characterize the Epicurean conception of law. I argued that the Epicurean view is best understood as a kind of inclusive positivism, that is, the view that law (ideally) incorporates moral facts. Finally, I contrasted my reading of Epicurean justice and law with that of other scholars, showing how my reading differs from previous ones.

verstanden werden kann, der sich vom Inhalt gewöhnlicher naturrechtlicher Theorien (wie Platons oder der Stoa), die absolute Normen setzen, prinzipiell unterscheidet" (1972: 92; but see also Müller 1988: 120). In any event, none of the authors discussed is careful in defining what they exactly mean by legal positivism and natural law theory, which makes it difficult to characterize their views (and the Epicurean view itself) precisely.

5. CONTRACTUAL JUSTICE AND ARETETIC JUSTICE: WOULD A SAGE VIOLATE A LAW, KNOWING SHE WILL ESCAPE DETECTION?

A key purpose of the laws and the punishments attached to them is to compel agents to act in accordance with the principles that motivate the laws (ideally ideas of justice). If an agent could escape detection, would she violate a law? For the Epicureans, the answer seems *prima facie* to depend on which agent one has in mind, a virtuous or a non-virtuous agent. In the case of a non-virtuous agent, one who does not possess the virtue of justice, the answer seems to be that she would violate the law. After all, such an agent in Epicureanism is only motivated to obey the law by the fear of detection and the punishments associated with breaking the law. Once this fear and these punishments are taken away, there is nothing stopping the agent from violating the law. In the case of a Sage, an ideal agent who possesses the virtue of justice, by contrast, the answer seems to be that she would not violate the law. After all, such an agent is not primarily motivated to obey the law by the fear of detection and of punishments, but because she has ‘internalized’ certain patterns of behavior so that she will act according to these patterns regardless of whether there are laws telling her to act a certain way or not.

Now, interestingly, this is not quite the answer we find in the ancient texts. Plutarch reports that Epicurus *himself* raises the question in one of his works “whether the Sage who knows that he will not be found out will do certain things that the law forbids.”²³⁵ Fortunately Plutarch also supplies us with Epicurus’ reply. Unfortunately,

²³⁵ εἰ πράξει τινὰ ὃ σοφὸς ὧν οἱ νόμοι ἀπαγορεύουσιν, εἰδὼς ὅτι λήσει. *Against Colotes* 1127d = fr. 18 Usener. Trans. by Einarson and De Lacy, modified.

however, this reply is rather cryptic. Epicurus supposedly answers: “the unqualified predication is not free from difficulty.”²³⁶ In other words, Epicurus answers ‘Maybe’ and so does not straightforwardly deny that a Sage would not violate a law under any circumstances. On the Epicurean view, then, there are some situations in which even a Sage would violate a law. And so, the interpretative challenge posed by the passage in Plutarch is for any scholar to explain what Epicurus meant by (1) specifying the circumstances in which an Epicurean Sage would violate a law and by (2) arguing why the Sage has good reasons to violate the law in such circumstances.

In this chapter, I will address this challenge by investigating what kinds of desires Sages cultivate and how they satisfy them. In other words, I will complement the investigation of the Epicurean conception of justice and law in the previous chapters by an account of Epicurean moral psychology. I will argue that Sages focus on pursuing their natural and necessary desires and that nature is set up in such a way that the pursuit of these desires usually does not require Sages to violate a law. However, there may be situations in which natural and necessary desires cannot be satisfied without violating a law. In such a case, one may argue, however, that the law in question has ceased to be just. I will thus claim that besides the virtuous or non-virtuous disposition of an agent, the second factor that needs to be taken into account when answering the question whether an agent would violate a law knowing she will escape detection is whether the law to be violated is, in fact, just. The Epicureans distinguish between justice and the laws, and they recognize that these two can come apart. Things

²³⁶ οὐκ εὖοδον τὸ ἀπλοῦν ἐπικατηγόρημα. *Ibid.* Trans. by Einarson and De Lacy. See also Westman 1955: 185f., following Diano 1946: 147 who argues that ‘*epikatēgorēma*’ has to mean ‘predicate.’ Alternatively, the word, according to the *LSJ*, could also mean ‘charge/accusation’ or ‘sign/indication.’

legislated as just (the laws) may have ceased to be just and no longer correspond to the preconception (*prolēpsis*) of the just.²³⁷ In such a case, I argue that a Sage would violate the law if she concludes that such a violation will be beneficial to her, but she will not commit an injustice, precisely because the law has ceased to be just. This hesitant answer on Epicurus' part explains why the unqualified predication is not free from difficulty.

In discussing this puzzle, I will also address a further issue, namely, that of the relationship between contractual justice and aretetic justice in Epicureanism. As we saw in previous chapters, the Epicureans defend a kind of social contract theory, according to which (1) justice comes to be through agreements that agents form with each other and (2) the laws come to be through a different and later set of 'agreements.' However, besides the justice that comes about as the result of an agreement, the Epicureans also argue that justice is a virtue: a character disposition that individual agents possess. Consequently, a much-discussed question in scholarship is how these two kinds of justice are related.²³⁸ This issue of the relationship between the two kinds of Epicurean

²³⁷ See the more detailed discussion in chapter 7.

²³⁸ In recent Anglophone research, some scholars have denied that there are two different conceptions of justice in Epicurus, mainly on the basis that there is no textual basis for the distinction. See Armstrong 1997: 324, O'Keefe 2001a: 134f., and Brown 2010 [2009]: 192. The traditional view that states that there are in fact two different conceptions is found in Philippson 1910: 296, Arrighetti 1973: 553, Müller 1972: 104f., Bollack 1975: 364f., Mitsis 1988: 91f., and Annas 1993a: 293ff. While critics are right in pointing out that the distinction between contractual and aretetic justice is not explicitly drawn in any Epicurean text, there is quite a large amount of textual evidence that indicates that justice must also have been a virtue for the Epicureans. First, according to Diogenes Laertius, Epicurus wrote a work called "On Justice and the Other Virtues [Περὶ δικαιοσύνης καὶ τῶν ἄλλων ἀρετῶν]" (*Lives* X.28). And second, Cicero in his lengthy discussion of Epicurean virtues also includes justice (*On Ends* I.50ff.). Finally, there are several passages, in which the term '*dikaionsunē*' is used, which refers to justice as a virtue, and not '*to dikaion*', which is typically used to refer to the justice that comes about by agreements. Besides the already quoted passage in Diogenes' *Lives*, see KD 33, fr. 518 and 519 Usener, Philodemus, *On Piety* II. 2149f. and 2260f., Obbink, *On Property Management* XXIV.17 Tsouna, *On Anger* XXIV.39 Indelli, and Diogenes' of Oenoanda Golden Age fragment (fr. 56, col. I.6f. Smith).

justice arises in regard to the passage quoted in Plutarch because a certain motivation to be just corresponds to these two kinds of justice. In the case of contractual justice (and the laws), this motivation is often first and foremost the fear of repercussions for violating the agreements.²³⁹ In the case of aretetic justice, by contrast, this motivation is first and foremost that the agent has grasped that a certain action is the beneficial thing to do.²⁴⁰ In other words, then, the problem addressed in the passage quoted in Plutarch raises the issue of whether contractual justice becomes wholly irrelevant to motivate agents to act, once they have achieved aretetic justice. And so, an additional interest in discussing the question of whether a Sage would violate a law knowing she could escape detection is that it is connected to the issue of how the two forms of justice work together to ensure that different kinds of agents act justly.

In what follows, I begin with a brief discussion of two ancient explanations of the question of whether the Sage would violate a law, knowing she will escape detection, to set the stage for my solution (5.1.). I then develop this solution in detail (5.2. and 5.3.). Finally, I discuss some objections to the solution and comment on the relationship between contractual and aretetic justice in Epicureanism (5.4. and 5.5.).

5.1. Cicero and Plutarch

In Antiquity, the only sources for the discussion of Epicurus' question are Cicero and Plutarch. These texts say quite a bit about the debate and the misunderstandings

Perhaps one also needs to add Philodemus, *Rhetoric* II.282, fr. IX as well as *On Poems* V, col. XXXIV.3 Mangoni to this list.

²³⁹ So agents are not motivated to adhere to the terms of an agreement because they have consented or because there is a natural law that tells them to do so, as one might perhaps expect, thinking of modern theorists such as Hobbes and Locke.

²⁴⁰ Not because it is in itself beneficial to do a certain action but because it is beneficial for an agent to perform an action in order to obtain freedom from mental distress (*ataraxia*).

that have been produced in regard to the Epicurean conception of justice and law. Cicero does not directly refer to the question as it is quoted later in Plutarch. However, he at least reports a possible answer to whether the Sage would violate a law, knowing she will escape detection, insofar as he discusses the response “certain philosophers,”²⁴¹ who are generally identified with the Epicureans, give to the challenge posed by the Ring of Gyges story.²⁴² Even if the scenario developed in the Ring of Gyges story is not quite the same as the scenario posed by the question of whether the Sage would violate a law, knowing that she will escape detection,²⁴³ Cicero’s text is still relevant because of the affinity to the Ring of Gyges story and the question of the law-breaking Sage. As a result, one can easily image that the Epicureans, on Cicero’s reading, gave a similar answer to both scenarios.

Cicero’s discussion of the Ring of Gyges story is found in Book III of *On Duties*. This book deals with the conflict between the right (*honestum*) and the beneficial (*utile*), and therefore, the Ring of Gyges story is introduced as a problem of aretetic justice in Cicero, namely, as the challenge of how the pursuit of pleasure entails the exercise of virtue for the Epicureans.

According to Cicero, who is greatly annoyed about such stubbornness, the Epicureans

declare that the story related by Plato [about the Ring of Gyges] is fictitious and

²⁴¹ *philosophi quidam*. Cicero, in *On Duties* III.39.

²⁴² See especially Woolf 2013. According to this thought experiment, a shepherd finds a ring that gives him the power to become invisible, which allows him to perform any action he wants, including those that are considered immoral. The challenge raised by the story is thus to identify reasons for being just, even if there are no societal sanctions to be feared by committing an injustice.

²⁴³ More on this difference below.

imaginary. As if he affirmed that it was actually true or even possible! But the force of the illustration of the ring is this: if nobody were to know or even suspect the truth, when you do anything to gain riches or power or sovereignty or sensual gratification – if your act should be hidden forever from the knowledge of gods and men, would you do it? The condition, they say, is impossible. Of course it is. But my question is, if that were possible which they declare to be impossible, what pray, would one do? They press their point with right boorish obstinacy: they assert that it is impossible and they insist on it; they refuse to see the meaning of my words, “if possible.”²⁴⁴

Instead of tackling the problem of how seeking pleasure entails the acquisition of justice head on, the Epicureans in the passage are said to react to the Ring of Gyges story in a roundabout way. On a first reading of the above passage, they outright deny that there are such situations. And on an alternative reading, they acknowledge that there are such scenarios as described by the Ring of Gyges, but claim that in such a case, agents would nevertheless not violate a law because they can never be sure that they will not be detected at some point in the future. Such fear of detection is incompatible with a main goal of Epicurean psychology: to maintain a state of freedom from mental distress (*ataraxia*). Taken as a reply to the objection that Epicurean agents would violate a law when they could be sure to escape detection,²⁴⁵ the Epicureans, according to Cicero, would then either deny that there are ever any situations in which the ‘could escape detection’-condition holds (on the first reading) or, alternatively, they would deny that one can ever be sure and that an agent will always fear detection, which

²⁴⁴ *fictam et commenticiam fabulam prolatam dicunt a Platone, quasi vero ille aut factum id esse aut fieri potuisse defendat. Haec est vis huius anuli et huius exempli: si nemo sciturus, nemo ne suspicaturus quidem sit, cum aliquid divitiarum, potentiae, dominationis, libidinis causa feceris, si id diis hominibusque futurum sit semper ignotum, sisne facturus? Negant id fieri posse. Nequaquam potest id quidem, sed quaero, quod negant posse, id si posset, quidnam facerent. Urgent rustice sane. Negant enim posse et in eo perstant, hoc verbum quid valeat non vident. On Duties III.39; Trans. by Miller.*

²⁴⁵ That is, instead of a direct answer to the Ring of Gyges story, which is the immediate context of the discussion.

is not conducive to maintaining *ataraxia* (according to the second reading).²⁴⁶ In other words, according to both readings, the Epicureans can block the objection that the Epicurean Sage would violate a law if she knew that she would escape detection.

However, it seems to me that both readings come at a big price. The first reading (that the Epicureans refuse to accept the scenario presented to them) seems to me to be a very uncharitable reading of the Epicurean view. It not only presents the Epicureans as quite obtuse interlocutors, but also ignores that the Epicurus *himself* raised the question, as I already pointed out. Also, it is unclear how refusing to accept the scenario as a real possibility squares with the answer that Plutarch reports that Epicurus gave, namely, that “the unqualified predication is not free from difficulty.”

The second reading, in comparison to the first reading, takes the Epicureans seriously as interlocutors. However, it then succumbs to the same objection as the previous one. It is unclear on this reading why there would be a difficulty to give an answer if Cicero were right in assuming that an Epicurean Sage will never violate a law because of the fear of being found out. The answer that Plutarch reports on Epicurus’ behalf requires that the Sage can at least violate the law in some circumstances. Accordingly, the major task of this chapter is to find a more satisfactory answer, one that allows us to specify the circumstances, in which a Sage would violate a law.

Before doing this, however, let us briefly examine the interpretation of Epicurus’ answer (“the unqualified predication is not free from difficulty”) that Plutarch gives us. Unfortunately, he is not much better than Cicero when he contends that it simply means that the Sage will say to herself: “I shall do it [that is, violate the law], but I do not wish to

²⁴⁶ For support for the first reading, see Roskam 2012: 24ff. For the second one, see Rist 1972: 123.

admit it.”²⁴⁷ This again amounts to dismissing Epicurus’ answer as untenable and to thinking that the Sage will be an immoral agent who is surreptitiously willing to harm others if she can.²⁴⁸ Plutarch’s reading is not surprising, given the general attitude thinkers of other schools had towards Epicureans.²⁴⁹ In any case, the systematic dismissal of Epicurus’ view has influenced opinions of notable scholars. Especially early scholars writing on Epicurus have often just accepted the view that the Epicurean Sage would violate a law if she knew that she will escape detection.²⁵⁰ But again, if the passage really posed such a problem for Epicurean theory, then it seems odd that Epicurus himself raised the question. In what follows, I will thus show that there is a more charitable and sophisticated reading of the Epicureans available than the one offered in Cicero and Plutarch.

²⁴⁷ πράξω μὲν, οὐ βούλομαι δὲ ὁμολογεῖν. *Against Colotes* 1127D. Trans. by Einarson and De Lacy.

²⁴⁸ The context of the discussion is wholly polemical. The passage is located at the end of *Against Colotes* where Plutarch tries to show that an Epicurean life is a life without any regard to the laws.

²⁴⁹ Besides the treatise by Plutarch, Cicero’s *On Ends* I-II is a great example of this as are some of the stories collected by Diogenes Laertius’ *Lives*. In this vein, for instance, it is reported that Epicurus, the philosopher of pleasure vomited twice a day because he overindulged in food and drink (X.6).

²⁵⁰ See especially Taylor (1911: 94) and Zeller 2013 [1923]: III.1, 463 [448], fn. 4. A version of this view is still found in Diano 1946: 147 who claims that the question as it is posed creates a double bind for Epicurus: if he answered that the Sage would violate a law, this would mean that no one could in the end be safe. If he answered that the Sage would not violate the law, he would admit that there is something just in itself, which flies in the face of Epicurean theory. (“At οὐκ εὔδον, *non ab omni difficultate expeditum*, τὸ ἀπλοῦν *dicit* κατηγορημα, *id est ut ἀπλῶς, plane et simpliciter*, ‘aget’ aut ‘non aget’ respondeat. Cur? Quia sicilicet si quid contra leges sapientem acturum esse dicerit, stultis quoque eandem facultatem fecerit, quo facto nemo securus esse potest; sin autem negaverit, aliquid per se iustiam esse confessus erit totamque suae disciplinae rationem everterit.”)

5.3. Epicurean Moral Psychology and Justice

Let us begin to give an answer to whether the Sage would violate a law, knowing that she will escape detection, by examining more closely the Sage's motivations to act. In doing so, we can draw on the work of Paul Vander Waerdt, Rolf Westman, and Reimar Müller, since they all claim that a look at Epicurean moral psychology explains why the Sage will not violate a law.²⁵¹ As I have already noted, I will argue that although this feature plays a crucial part in explaining the scenario of a law-breaking Sage, it will not be sufficient on its own. Since Vander Waerdt's account is the most developed one of the three just mentioned, I will focus on his contribution to develop my account.

According to Vander Waerdt, one must distinguish a positive and a negative reason why Epicurean agents might not violate a law.²⁵² The negative reason is the fear of being punished and the positive reason is that obeying a law will yield a benefit, namely, be conducive to a state of freedom from mental distress.²⁵³ Now, most Epicurean agents obey the law because they fear detection and punishment for their actions, but Sages do not. They obey the law because they grasp its usefulness. In this vein, 5th century CE anthologist Stobaeus reports that for the Epicureans, "the laws are laid down because of Sages, not so that they do not commit an injustice, but so that no

²⁵¹ See Westmann 1955: 185ff., Müller 1972: 86, fn. 203, and Vander Waerdt 1987.

²⁵² Vander Waerdt 1987: 406 and 410. See also Plutarch, *That a Pleasant Life is Impossible* 1104b.

²⁵³ One could argue that both the positive and negative reason involve fear, since the Epicurean Sage will pursue what is beneficial in order not to have to be plagued by the fear that results from living an unjust life. Nevertheless, there seems to be a difference between acting because there are certain external restraints in place (that is, sanction mechanisms) and acting because of a certain character disposition.

injustice is done to them.”²⁵⁴ And Hermarchus writes: “[I]f everyone were equally able to observe and be mindful of benefit, they would have no need of laws in addition; of their own choosing, they would steer clear of what is forbidden and do what is prescribed.”²⁵⁵ In other words, then, laws protect the Sage from other people’s wrong-doing, but do not have the purpose of guiding the Sage in her actions. Likewise, in Hermarchus, we also find the distinction between two different ways of obeying the law.²⁵⁶ According to the first way, the motivation for obeying the law is supplied by a system of punishment that is set up in order to deter people from “acting against public or private interest.”²⁵⁷ According to the second way, the motivation for obeying the law is an understanding of what is beneficial and of the fact that it is better to act on this understanding than not to act on it. This understanding seems to be exactly the one that the Sage possesses. In short, then, the main reason why a Sage follows a law is because this law is beneficial.

Now, what kinds of beneficial things do Epicurean Sages pursue? To answer this question, one must examine the desires agents – and specifically Sages – cultivate. According to the Epicureans there are three kinds of desires:²⁵⁸ First, there are natural

²⁵⁴ οἱ νόμοι χάριν τῶν σοφῶν κεῖνται, οὐχ ὅπως μὴ ἀδικῶσιν ἀλλ’ ὅπως μὴ ἀδικῶνται. Fr. 530 Usener. Trans. mine.

²⁵⁵ εἰ δὲ πάντες ἐδύναντο βλέπειν ὁμοίως καὶ μνημονεύειν τὸ συμφέρον, οὐδὲν ἂν προσεδέοντο νόμων, ἀλλ’ αὐθαιρέτως τὰ μὲν εὐλαβοῦντο τῶν ἀπειρημένων, τὰ δὲ ἔμπαπτον τῶν προστεταγμένων. *Ibid.* I.8.4; Trans. by Clark, modified. By contrast, Plutarch claims that “Epicurus does believe that one has to keep from wrong-doing for any other reason than the fear of punishment [οὐ γὰρ Ἐπίκουρος ἄλλω τινὶ τῆς ἀδικίας οἶεται δεῖν ἀπείργειν ἢ φόβῳ κολάσεων]” (*That It is Impossible* 1104b = fr. 534 Usener; Trans. mine). However, this remark is contradicted by testimony in Epicurean authors, which seems more reliable than what Plutarch writes.

²⁵⁶ Fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.8.4f. These different ways of obeying the law roughly correspond to what Hart called “being obliged” and “having an obligation.” See Hart 2012 [1961]: 82ff.

²⁵⁷ τὸ μήτε κοινῇ μήτε ἰδίᾳ τὸ ἀλυσιτελὲς πράττειν. *Ibid.*, I.8.3.

²⁵⁸ Epicurus, KD 29 and 30, GV 21, *Letter to Menoeceus*. 127f., Cicero, *On Ends* I.45 and II.26ff., and fr. 456 Usener. See also Annas 1989: 147ff., Annas 1993a: 190ff., Meyer 2008: 108ff., and O’Keefe 2010: 124ff. For slightly different accounts, see Cooper 1999: 498ff. and Conche 1977:

and necessary desires. Second, there are natural and unnecessary desires. And third, there are unnatural and unnecessary desires. The first class of desires consists of those desires that pertain to our basic needs. These desires are 'natural' in the sense that we simply have these desires by virtue of being human beings who have a certain constitution. Hunger and thirst, for instance, are such desires. And this class of desires is 'necessary' in the sense that the objects of these desires are necessary for our happiness, to be free from disturbance, or simply to subsist. This contrasts with the second class of desires, the natural and unnecessary desires. These desires, according to Epicurus, also broadly pertain to our basic needs and are hence natural, but they are 'unnecessary' because their objects are not strictly necessary to fulfill our basic needs.²⁵⁹ The desire to drink lemonade and the desire to eat a Kobe steak are examples of such desires. While drinking lemonade or eating a Kobe steak will certainly satisfy our natural desires, arguably, it is not necessary to drink lemonade or eat a Kobe steak to do so; any other drink and food would fulfill the same function of satiating our thirst and hunger. Finally, this leaves the last class of desires, unnatural and unnecessary desires. Such desires are, for instance, the desire for fame, power, or wealth. Such desires are not natural because they do not address any of the basic human needs and they are unnecessary because their objects are not strictly necessary for our happiness, a life free from disturbance, or simply, sustenance.

63ff. (followed by Salem 1989: 75ff.). Tsouna (2007: 20f.) points out that this classification of desires is slightly expanded on in *PHerc* 1251 col. VI.1ff.. We can ignore these differences in this context however. For more broad accounts of pleasure in antiquity that also include the Epicureans, see Gosling and Taylor 1982 and Wolfsdorf 2013.

²⁵⁹ The somewhat odd case is sexual desire which according to the Epicureans is also natural and unnecessary, although there is no natural and necessary desire that corresponds to it (to make the generic vs. specific desire distinction work). On this problem, see Annas 1993a: 193f. and fn. 29, O'Keefe 2010: 184, fn. 3.

According to the Epicureans, the Sage will focus on fulfilling his natural and necessary desires, partaking of natural and unnecessary desires only when she is sure that their objects can be obtained without any problem, and she will altogether evade the pursuit of unnatural and unnecessary desires.²⁶⁰ The reasons are quite simple: First, the Sage has no interest in having unnatural and unnecessary desires because these desires are not conducive to *ataraxia*.²⁶¹ If one pursues and acquires wealth, power, or fame, one will become concerned about not losing these goods and as a consequence worry more.²⁶² One's soul will thus be disturbed and one cannot lead the life of *ataraxia*. What is more, however, as the scholion to KD 29 states, only the satisfaction of natural and necessary desires directly removes the pain we feel as a result of our bodily constitution; neither does satisfying unnatural and unnecessary nor natural and unnecessary desires. Satisfying natural and unnecessary desires such as the desire to drink a particular drink, as the same scholion explains, only vary the pleasure we experience, but do nothing to alleviate our pain.²⁶³ They are, according to KD 30, products of "empty opinion[s]."²⁶⁴ In other words, this means that any desire that is non-generic (necessary) or does not pertain to our basic needs (natural) is a false desire that

²⁶⁰ KD 30 and GV 21.

²⁶¹ GV 81, *Letter to Menoeceus* 130f., and Cicero, *On Ends* I.44 as well as I.59.

²⁶² See also fr. 582 Usener, where the Sage is said not to commit an injustice "for gain [*epi kerde*]."

²⁶³ "Natural and unnecessary desires are those that only vary the pleasure, but do not remove the pain [φυσικὰς δὲ οὐκ ἀναγκαίᾳς δὲ τὰς ποικιλοῦσας μόνον τὴν ἡδονήν, μὴ ὑπεξαιρουμένας δὲ τὸν ἄλγῆμα]." Trans. mine. Certainly, one may think that this is odd, since a desire to drink lemonade also entails a desire to drink. However, for the Epicureans these two desires seem to be separate from each other.

²⁶⁴ παρὰ κενὴν δόξαν αὐται γίνονται. See also KD 29 where the same claim is made about unnatural and unnecessary desires.

we wrongfully pursue.²⁶⁵ Instead, according to Epicurus, the Epicurean Sage will focus exclusively on cultivating natural and necessary desires and derive her pleasure from this source, since natural and necessary desires, in contradistinction to the other classes of desires, are not unlimited.²⁶⁶ Greediness (*pleonexia*) is thus not a problem for the Epicurean Sage. Furthermore, natural and necessary desires can be easily satisfied:²⁶⁷ Nature is set up in such a way that our generic desires for basic human needs are easy to satiate. And so, the Epicurean Sage will have no problem satisfying natural and necessary desires; she will not have a reason to commit an injustice, as Torquatus, the Epicurean spokesperson in *On Ends*, explicitly claims:

for the rich and clever generous conduct seems more in keeping, and liberality wins them affection and good will, the surest means to a life of peace; especially as *there is no motive for transgressing*: since the desires that spring from nature are easily gratified without doing any man wrong, while those that are imaginary ought to be resisted, for they set their affections upon nothing that is really wanted.²⁶⁸

In the same vein, the Epicureans claim that for the Sage, living the life of pleasure is living the life of justice and living the life of justice is living the life of pleasure: “It is not possible to live pleasurably without living in a reasonable, fine, and just manner nor to live in a reasonable, fine, and just manner without living pleasurably.”²⁶⁹ In short,

²⁶⁵ In this context, see also the comments in Mitsis 1988: 62f., fn. 10.

²⁶⁶ KD 15.

²⁶⁷ KD 15 and 21.

²⁶⁸ *et opes vel fortunae vel ingenii liberalitati magis conveniunt, qua qui utuntur, benivolentiam sibi conciliant et, quod aptissimum est ad quiete vivendum, caritatem praesertim cum omnino nulla sit causa peccandi. quae enim cupiditates a natura proficiscuntur, facile explentur sine ulla iniuria, quae autem inanes sunt, iis parendum non est. nihil enim desiderabile concupiscent.* Cicero, *On Ends* I.52f.; Trans. by Miller; emphasis added.

²⁶⁹ Οὐκ ἔστιν ἡδέως ζῆν ἄνευ τοῦ φρονίμως καὶ καλῶς καὶ δικαίως <οὐδὲ φρονίμως καὶ καλῶς καὶ δικαίως> ἄνευ τοῦ ἡδέως. KD 5; Trans. mine. See also *Letter to Menoeceus* 132f., Cicero, *On Ends* I.50ff. and I. 57.

then, since natural and necessary desires, which the Sage exclusively cultivates, are easy to satisfy and justice for the Epicurean consists in refraining from harming others, a Sage can presumably most of the time easily fulfill his desire without needing to harm anyone. She will not have a motivation to be unjust.

Now, being just and being lawful is not the same thing. Unfortunately, Vander Waerdt, in his article, at times seems to confuse the two, and consequently, he argues that the Sage will also not violate a law. But this, on my view, amounts to conceding too much. Accordingly, the solution offered by Vander Waerdt has to be amended. While Vander Waerdt is right that the Sage will not commit an injustice, he is wrong in assuming that the Sage will not violate a law, which seems to be the only way to make sense of the cryptic answer that Epicurus gives. Let us therefore turn to the importance of justice for the law in question in order to understand why the Sage might violate a law, knowing she can escape detection.

5.4. The Importance of a Just Law

On my reading, the second key factor to explaining the question of whether the Sage will violate a law is to refer to circumstances in which laws are just or unjust, that is, circumstances in which violating a law is not equivalent to committing an injustice. This means adding a complication to the problem: Not only are there different motivations why an agent can perform a just action (the fear of detection and punishment on the one hand or grasping that an action is beneficial on the other hand), but there are also different institutional configurations that result from the fact that the preconception (*prolēpsis*) of the just does or does not agree with the laws that are in place. In this section, I first present the view, held by Robert Philippson, that the issue of whether the law is just has no bearing on the question of whether the Sage will violate a

law. Second, I reject Philippson's view and present the view that I endorse, namely, that it is of utmost importance to the Sage whether the law in question is just or unjust.

In his article, Philippson distinguishes between two scenarios:²⁷⁰

(1) The preconception of the just can agree with the things that are legislated (that is, the law in question is just).²⁷¹

(2) The preconception of the just can disagree with the things that are legislated (that is, the law in question is unjust).

In the first case, Philippson argues that there is no reason for the Sage to be unjust. Since justice and laws are in agreement and the Sage is virtuous and so does what is just, as I have also argued in the previous section of this chapter, there is no reason for the Sage to do anything that is forbidden by the laws, even if she knew that she could do so and escape detection. The second case is thus the more interesting one. Here the Sage has reason to do something that is illegal, given that her allegiance to the preconception of justice might be thought to be greater than her allegiance to a law that has ceased to be just. According to Philippson, however, even in such a situation, the Sage would not violate a law. Like Socrates in Plato's *Crito*, Philippson argues that the Sage will adhere to the law of the state or else (unlike Socrates) choose to emigrate, which he backs up by referring to a passage in Philodemus:

Some things are just or unjust by nature and never change, others vary according to locality and condition. Laws which are not of this nature, but established for various reasons ought to be obeyed [*têrein axiountas*], or if philosophers do not think that they can live well under these laws they ought to leave the country. They can be social to a high degree by observing those

²⁷⁰ 1910: 302ff.

²⁷¹ See KD 37 and 38 as well as the more detailed discussion in chapter 7.

principles which make for likeness and not for difference; we can do this without being observed as well as with publicity; with pleasure and not under compulsion; steadily and not in an uncertain fashion.²⁷²

In other words, according to Philippson's reading, obedience of the laws is valuable in itself for the Epicurean Sage.

Given what we have said so far, the obvious problem with this explanation is that it does not allow that the Sage would at least in some circumstances violate a law, a consequence that, as I pointed out above, seems to be required to make sense of Epicurus' answer that "the unqualified predication is not free from difficulty." However, this issue is easily addressed by slightly modifying the explanation by allowing the Sage to violate a law when a law has ceased to be just, as, for instance, Benedict Einarson and Phillip De Lacy have also suggested.²⁷³ In such a case, breaking the law seems

²⁷² "τοῖς δυν[αμένοις τὴν] φύσει δικαίου κ[αὶ] ἀδίκου χ[ώρ]αν ἔχειν, [ὥστ'] ἐν τοῦ[τ]ω κατὰ μη[θὲν] ἀλλάττειν, τὰ δ' ἐναντία [τ]ὴν τῶν ἐναντίων, ἕνια δὲ κατὰ τόπους καὶ περιστάσεις. Ὅσα δ' οὐκ ὄντα τοιαῦτα τεθεμάτισται παρ[ά] τισιν δι' ἀσδήποτ' αἰτίας, [κ]αὶ ταῦτα τηρεῖν ἀξιούντας ἢ μεταβαίνειν ἐκ τῶν τόπων, ἐὰν [μ]ὴ καλῶς ζ[ῆ]ν [οἴωνται· δύνασθαι δ' οὐδὲν ἥττον αὐτοῖς ὁμιλητῖ]κ[ω]τά[τ]ους εἶναι καὶ τῶ[ι] μὴ τὰ διωρισμένα μόνον ἀλλὰ καὶ τὰ τὴν ὁμοειδεῖαν αὐτοῖς ἔχοντα διαφυλάττειν, κἀκεῖνα μὴ μόνον συνειδότητων ἀλλὰ κἀν λανθάνωμεν ἀπαξάπαντας, καὶ μεθ' ἡδονῆς ἀλλ' οὐ δι' ἀνάγκην, καὶ βεβαίως ἀλλ' οὐ σαλευομένως." *Rhetoric* I.259, col XXIV.26ff. Sudhaus. Trans. by Hubbell. See also the discussion of the opening sentence of this passage in chapter 4. The same claim (that one should obey the laws even if they are unjust) is also made by Perelli (1967, 196), albeit on more dubious grounds. Referring to Hermarchus (Porphyry, *On Abstinence* I.9), Perelli writes: "*Pur predicando per il sapiente l'astensione dalla vita pubblica, Epicuro afferma l'utilità e la convenienza di ubbidire alle leggi dello stato; da Porfirio si ricava che, come per Socrate nel Critone, l'obbedienza è dovuta anche quando le leggi non siano giuste.*" Note, however, that the passage in Porphyry does not discuss the obedience of an unjust law. At I.9, Hermarchus claims that even unintentional homicide (*ton akousion phonon*) was penalized by the first law-givers so as not to set a precedent for people to imitate such behavior unintentionally or negligently. (This is a strange claim; it seems rather unlikely that cases of (true) unintentional homicide will rise dramatically even if they are not penalized.) In Hermarchus, this act of legislation is, however, justified by referring to utility: It is not beneficial to a society as a whole to have a high number of (unintentional or intentional) homicides occurring in it. It is therefore a just law, not an unjust law, as Perelli claims.

²⁷³ See the comment on p. 313, fn. b of Einarson and De Lacy's edition of *Against Colotes*; see also Denyer 1983: 144ff. and Mitsis 1988, 90f., fn. 75.

unproblematic; it does not imply that the Sage also committed an injustice by violating a law.

This explanation has the merit that it takes Epicurus' reply seriously and it mainly differs from Philippson's in the assessment of whether obedience of the law as such has value for the Epicureans. In Epicureanism, human beings obey laws insofar as they are beneficial (*sumpheron*). Accordingly, the just and, consequently, the things that have been legislated as just in accordance with the preconception of the just (the laws) are in KD 31 explicitly linked with what is beneficial. If there is no benefit to be obtained by obeying the law, then obeying is pointless.²⁷⁴ This could mean that a law is obeyed after all because it is better to have a law in place than to have no law at all. However, it could also mean that it is better for an agent to violate a law because she is focused on obtaining what is beneficial, not on what is just or lawful. In the same vein, Geert Roskam points out that a central tenet of Epicureanism is "conditional reasoning," that is, the dependence of the choice of action on whether it is conducive to benefit.²⁷⁵ And Plutarch himself, in *Against Colotes*, shortly after discussing Epicurus on whether the Sage would violate a law, quotes *The Letter to Idomeneus*, of which only fragments have survived. There, Epicurus advises "not to live in servitude to the laws and to opinions, as long as they refrain from making trouble in the form of a blow administered by your neighbor."²⁷⁶ And this entails violating a law in some cases, namely, when an agent can

²⁷⁴ 'Benefit' here cannot only refer to an individual benefit that an agent receives when obeying a law, but must also refer to the benefit of the group. Otherwise, the free rider problem arises. I already briefly alluded to this problem and the relationship between the benefit of individuals and the benefits of the group in chapter 2.

²⁷⁵ See his 2007 book.

²⁷⁶ μὴ νόμοις καὶ δόξαις δουλεύοντα ζῆν, ἐφ' ὅσον ἂν μὴ τὴν διὰ τοῦ πέλας ἐκ πληγῆς ὄχλησιν παρασκευάζωσιν. Plutarch, *Against Colotes* 1127d. Trans. by Einarson and De Lacy, modified.

escape detection. Finally, Philodemus writes that agents should observe the laws, but only insofar as they do not conflict with exercising virtue: “it is necessary that all obey the laws and common customs as long as they do not command anything impious.”²⁷⁷ In other words, if there is a conflict between the laws and what is beneficial, an Epicurean agent may well do what is beneficial rather than obey the law. After all, it seems difficult to imagine, then, that the Epicurean agents would be forced to adhere to a law, knowing that the law is not beneficial and that there are no repercussions to be feared if they violate it.

This brings us to the Philodemus passage that was quoted above and that Philippson adduces to support his view. Unfortunately, the text is very uncertain and we do not have any context to evaluate it. Perhaps, however, rather than being understood as a general statement in favor of obeying the law, it can also be understood as a suggestion connected to leading a life that will lead to freedom of mental distress (*ataraxia*): It is better for the Sage to obey the laws of the state or else to migrate if she wants to live an unperturbed life.²⁷⁸ If this is so, then Einarson and De Lacy’s reading (that a Sage will violate an unjust law) seems preferable to Philippson’s (that the Sage will never violate a law), especially since the passage in Plutarch seems to require a non-categorical answer to the question of whether the Sage would violate a law.²⁷⁹

²⁷⁷ [χρ]ῆ πάντα πείθεσ[θαι] τοῖς νόμ[οι]ς καὶ [τοῖ]ς ἐθισμοῖς ἕως [ἂν μ]ὴ τι τῶν ἀσεβῶν [προ]στάτ[τ]ωσιν. *On Piety* 1379ff. Obbink. Trans. mine.

²⁷⁸ See Roskam 2012: 33.

²⁷⁹ For additional criticism of Philippson, see Vander Waerdt 1987: 407, fn. 20. Note also that already Zeller (2013 [1923], III.1, 463 (448)) refers to the same passage in Philodemus as Philippson to back up the claim “*dass man das Rechte nicht nach dem Buchstaben, sondern nach dem Geist der Gesetze [...] tue.*”

What might a scenario in which a Sage will violate a law look like? The best candidate seems to be one in which there is a law that is at odds with the satisfaction of natural and necessary desires that Sages have.²⁸⁰ To be more specific is difficult, though, because such specificity depends on having a complete list of all desires Epicurus considers natural and necessary. Yet Epicurus does not provide us with such a list. Epicurus merely writes that “among [natural and] necessary desires, some are necessary for happiness, others for the freedom from bodily disturbance, yet others for life itself.”²⁸¹ In any case, all scenarios would have to be based on this specification on Epicurus’ part. Perhaps an example of such a scenario would be a special situation, in which a Sage might decide to steal, in order to obtain food or drink to sustain herself.²⁸² However, even such a scenario is problematic insofar as nature is set up in such a way according to the Epicureans that the satisfaction of natural and necessary desires is always quite easy. Furthermore, as I argued at length in the previous section of this chapter, Epicurean agents are able to ‘scale back’ their desires to a very large extent, so far as to evade as much as possible to be in the position of ever not being able to satisfy them. It seems, therefore, that by being content, for instance, with ‘less’ and ‘simpler’ things (eating a ration of beans instead of a four-course meal), Epicureans are well able to evade being in a situation in which they would be forced to violate a law (at least in

²⁸⁰ This is also stressed in fr. 582 Usener: “Epicurus says that he who in his opinion is wise does not want to commit an injustice for some profit, for he cannot have assurance that he would escape notice. On the condition of having assurance to escape notice, he would commit the injustice according to him [καὶ ὁ γε Ἐπίκουρος ἀδικεῖν ἐπὶ κέρδει τινὶ <μὴ> βούλεσθαι φησι τὸν κατ’ αὐτὸν σοφόν· πίστιν γὰρ λαβεῖν περὶ τοῦ λαθεῖν οὐ δύνασθαι. ὥστε εἰ πεισθήσεται λήσειν, ἀδικήσει κατ’ αὐτόν.]”

²⁸¹ τῶν δ’ ἀναγκαίων αἱ μὲν πρὸς εὐδαμονίαν εἰσὶν ἀναγκαῖαι, αἱ δὲ πρὸς τοῦ τὴν σῶματος ἀοχλησίαν, αἱ δὲ πρὸς αὐτὸ τὸ ζῆν. *Letter to Menoeceus* 127; see also the discussion in Bollack 1975: 113f.

²⁸² See Vander Waerdt 1988: 417.

the great majority of all cases). Be this as it may, the Epicurean answer seems to insist on the fact that at least in some scenarios, a Sage will be allowed to violate a law, even if such a case is very difficult to specify. Again, as I have argued, though, the crux of the Epicurean solution seems to be that in these difficult to specify case, the Sage is violating a law, but not committing an injustice, since the law in question has ceased to be just.

5.4. Criticisms of the Solution

In the rest of the paper, I will consider four objections to the solution I proposed and comment on the relationship between contractual and aretetic justice that this solution entails. Furthermore, I will discuss two scenarios, in which the Sage will supposedly violate a law, arguing that these scenarios are not good examples of scenarios, in which a Sage will violate a law.

I begin with an objection that different readers of previous versions of this chapter have raised against my solution. It concerns the role the “knowing that she will escape detection”-clause plays for the solution I just outlined. After all, one might think that on the solution I proposed, a Sage could also violate a law *knowing* that she will not escape detection. But if this is so, then one wonders whether this is a problem for Epicurean view as I have presented it.

Let me begin to address this objection by spelling it out more. Note that there are in reality not only the two scenarios that Philippson discussed, namely, whether the law in question is just or unjust, but, in fact, in each case of these scenarios, the Sage might or might not escape detection. This gives us a total of four scenarios:

- (1) The laws are just and the agent knows that she will not escape detection.

- (2) The laws are just and the agent knows that she will escape detection.
- (3) The laws are unjust and the agent knows that she will not escape detection.
- (4) The laws are unjust and the agent knows that she will escape detection.

Since I have suggested that the Sage will never commit an injustice, the first two scenarios can be dismissed immediately; if the Sage will never commit an injustice, she will *a fortiori* never violate a just law. In regard to the fourth scenario, I have suggested that the Sage will – under certain conditions – violate a law. I took this to be the case that explains why Epicurus claims that “the unqualified predication is not free from difficulty.” However, on this solution, one wonders if the Sage would also violate a law if she knows that she will not escape detection. If she will, then the answer I have proposed (namely, that the law in question is unjust) may seem to be insufficient to explain Epicurus’ answer; it would be unclear what function of the escape-detection-clause has for the question that Epicurus raises. After all, in this case, Epicurus may have also asked whether the Sage would violate a law, leaving aside the issue of detection. For instance, in a society that as a whole has agreed on outlawing Epicureanism, is it not better for the Epicurean Sage to violate this law and risk detection, since there are overwhelming hedonistic reasons to practice Epicureanism than not do so?²⁸³

In response to this, I think it is best to reply that the detection-clause above all plays a rhetorical function in Epicurus’ answer. Epicurus might have chosen to raise the question in a less controversial form (will the Sage violate a law, knowing she will escape detection) rather than in the more controversial form (will the Sage violate a law, even if she knows that she will not escape detection). After all, by looking at Plutarch’s

²⁸³ See Mitsis 1988, 90f., fn. 75.

reaction in *Against Colotes*, one can already see what controversy the former version stirred, so it is not difficult to imagine how Epicurus' contemporaries would have reacted to the latter one. Alternatively, raising the issue of detection is an easy way to recall the different motivations Epicurean agents have to be just (that is, being just because sanction mechanisms are in place or because an agent has a virtuous character). The invocation of the detection-clause may thus merely echo these different motivations. In this case, the role of the detection clause is again mainly rhetorical. In any case, whatever Epicurus' reasons may have been to include the detection clause, it seems to me that the Epicurean view also forces us to concede that a Sage would violate a law, knowing that she will not escape detection. However, I do not think that this makes the solution I have presented less plausible, even if it means that it follows that a Sage would also violate a law under some circumstances if she knew that she would not escape detection.

A second objection to the solution I argued for in this chapter concerns the account of moral psychology that I endorsed. Raphael Woolf advances such an objection against Vander Waerdt's account. And it also applies to my account insofar as I agree with the reading of Epicurean moral psychology that Vander Waerdt advances, even if I do not think that this account of moral psychology on its own can explain under what circumstances the Sage will violate a law. Woolf's objection is part of a paper on the Ring of Gyges and is only briefly articulated in a footnote.²⁸⁴ Woolf claims that, on the Epicurean view, thinking about pain and fear causes agents to cultivate certain desires that lead agents not to experience pain and fear. In this vein, for instance, a Sage will not commit an injustice, because committing such an injustice is connected with the fear

²⁸⁴ Woolf 2013: 809f., fn. 29.

of being found out and the pain of potential punishments. However, if the non-detection-clause holds, then it seems that the Sage in question will no longer experience the fear or the pain connected to potential punishments. She will thus no longer need to associate committing an injustice with fear and pain, which Woolf claims constituted the reason for not committing an injustice in the first place. As a result, the Sage *would* now commit the injustice precisely because fear and pain would no longer be holding her back.

In response to this objection, note first that Woolf slightly modifies the scenario in which the Sage is said to be able to escape detection. Whereas the Sage in the Plutarch passage is tempted to do a single injustice some of the time, the Sage in Woolf possesses the permanent capability to escape detection (as in the Ring of Gyges thought experiment). In other words, the case Woolf has in mind is quite different from the case that I discuss. Second, Woolf's objection allows me to clarify the process by which the Sage comes to have knowledge of what is just. After all, as a consequence of the shift in focus, Woolf brings up the question of how an agent is 'habituated' to act. In order for his argument to work, Woolf seems to tacitly assume that a Sage can be 'dehabituated' from being just (that the Sage can thus lose her status of being a Sage if certain sanction mechanisms are not in place and temptation arises). However, this additional assumption seems to be unwarranted, given the textual evidence.²⁸⁵ The result of being a Sage and possessing *ataraxia* on the Epicurean view is precisely that one will not be tempted to be unjust, regardless of whether certain conditions that might favor committing an injustice hold. Accordingly, we read in Diogenes Laertius that for the Epicureans, "he who has once become wise never more assumes the opposite habit,

²⁸⁵ On the way agents learn in Epicureans, see especially Rosenbaum 1996.

not even in semblance, if he can help it.”²⁸⁶ It is therefore irrelevant whether a Sage, once she has truly become a Sage, is subjected to desires that she would not have pursued otherwise; the sudden emergence of the possibility to commit an injustice will not ‘dehabituate’ the Sage to commit an injustice, as Woolf seems to assume.²⁸⁷

Two more objection to the solution I presented are found in David Gill. He takes a different strategy than Woolf, but also targets the moral psychological explanation advanced by Vander Waerdt (and that I also endorse) in his criticism, which is backed by a proposal on how to understand the relationship between contractual and aretetic justice. Unfortunately, Gill’s paper was never published and despite some effort I was not able to obtain a copy. As a result, I can only refer to the comments in Julia Annas’ *Morality of Happiness* where Gill’s critique is very briefly summarized:

Gill [...] argues that this [account of moral psychology that Vander Waerdt and I endorse] cannot account for (1) Epicurus’ repeated insistence on the impossibility of achieving complete security (cf. especially KD 34 and [GV] 7) nor for (2) the fact that Epicurus insists that the content of justice may vary with circumstances, so that the motivation to be just must be capable of explaining such differential behavior, whereas the lack of inappropriate desires would seem to explain the same behavior everywhere. Such an account, Gill argues, threatens to make the contractual account of justice applicable only to non-Epicureans, while good Epicureans will not need it; but this is difficult to reconcile with the totality of the evidence.²⁸⁸

²⁸⁶ τόν ἅπαξ γενόμενον σοφόν μηκέτι τὴν ἐναντίαν λαμβάνειν διάθεσιν μηδὲ πλάπτειν ἐκόντα. Diogenes, *Lives* X.117; Trans. by R.D. Hicks.

²⁸⁷ Likewise, if a Sage were to commit unjust acts, she would cease being a Sage. In this case, there are no intrinsic reasons to be just for the ‘Sage’ (which distinguishes Sages from the non-Sages) and this ‘Sage’ would also never be confronted with any binding legal restrictions; she would thus never be hindered to act unjustly in any circumstances. In this case, the ‘Sage’ would permanently stand outside of justice, being eager to be unjust. If she could also escape detection, then she would be like a god among mortal beings. Arguably such cases of great asymmetry between parties are no longer cases of justice proper for Epicureans. See Thrasher 2013: 429. In such a case, then, it seems right to concede that if someone has the permanent ability to act in whichever way one wants without having to fear any repercussions, this person has no incentive to be just.

²⁸⁸ See Annas 1993a: 297, fn 31.

Let us comment on the two criticisms in turn. The first criticism states that the account of moral psychology cannot plausibly explain the impossibility of achieving complete security. Since this claim is not spelled out, it is unclear to me why this is so. After all, the account I endorsed does not need to maintain that all agents will be able to achieve the disposition of a Sage. In fact, throughout this inquiry, I have very much stressed the fact that this is not so. As a result, I think that one may very well acknowledge that even if Sages do not commit injustices themselves, it is still possible that injustices may be committed against them and so that complete security is impossible on the Epicurean view.

The second criticism states that the account of moral psychology is deficient in assuming that the lack of certain desires explains just behavior. Since this lack would be the same everywhere where there is justice, the objection seems to state that the lack of desires merely explains why the same things would be just everywhere, but they would not explain why different things can be just in different circumstances. But this is precisely what the Epicureans claim in regard to the content of justice.

In regard to this criticism, I think one must distinguish between what is just and what is beneficial, as I have in previous chapters. The lack of certain desires, then, explains why certain things are beneficial everywhere, but they do not explain why certain things are just everywhere. Justice depends on more than an objective fact about the world, that is, it also depends on the social act of the agreement itself, which may vary from place to place. In other words, while not harming and being harmed is beneficial everywhere due the constitution and structure of desires that agents have, it also depends on the particular circumstances unique to a specific community, that is, the

agreements agents will form in order to obtain what is beneficial. So while a certain set of behaviors may thus constitute just action in one place, another set of behaviors may constitute just action in another place, even if both sets of behavior are beneficial.

Finally, I do not understand why the account of moral psychology that Vander Waerdt and I defend makes contractual justice apply to non-Epicurean agents. According to Annas, who claims to be following Gill in her account, the relationship between contractual and aretetic justice has to be understood as follows:²⁸⁹ Contractual justice is not merely a supplement for aretetic justice, but it is understood as its foundation; contractual and aretetic justice share the same conditions of development. The idea here is that while the reasons to be aretetically just and to be contractually just (that is, belief in the utility of committing a deed on the one hand and the fear of detection/punishment on the other hand), Epicurean agents do not need to think of the fear of detection/punishment every time they act. Rather, Epicurean agents are thought to function most efficiently if they have developed a disposition that reflects the idea that the content of justice is also what is most conducive to leading a happy life. However, again, the degree to which agents can develop this disposition, which is the virtue of justice, depends on contractual justice:

[W]hen these conditions [of contractual justice] are fulfilled, individuals can develop justice and the other virtues that people need in order rightly to direct their lives towards achieving *ataraxia*. Where the conditions of justice are not fulfilled, people are motivated to just behavior solely by fear of punishment; but where they are fulfilled, people are motivated to be just solely by the desire to achieve tranquility. Justice can be the virtue Epicurus wants it to be only in a society where the conditions of the contract hold; but this is not what the Epicurean bears in mind when she is just.²⁹⁰

²⁸⁹ Annas 1993a: 298ff.

²⁹⁰ *Ibid.*, 298f.

This basic picture of the relationship between contractual and aretetic justice, according to this view, then, is that the latter is nested in the former. The social contract human beings form with each other, that is, that people are just because of the agreements they form, is the basis for the development of a virtue, aretetic justice. And while people form agreements with the goal of achieving *ataraxia* (freedom from mental distress), they need constant reminders (in the form of sanction mechanisms) in order to be kept on track. However, in any given situation, agents can – so to say – ‘choose’ (dependent on the amount of virtue they possess) whether to act justly by themselves or whether they are only just because of the sanction mechanisms that are in place (at least in a less than perfectly just society where agents are tempted to commit unjust deeds).

Now, it is important to point out that ‘contractual justice’ here is ambiguous. It can refer both to the agreements that lead to justice but it can also refer to the agreements that lead to the laws. As I have already explained above, the laws in Epicurean theory are indeed superfluous when it comes to helping Sages act justly. After all, a Sage will pursue what is just regardless of whether there are laws in place or not. In this way, contractual justice really is irrelevant for Sages. But the same cannot be said about agreements. After all, not everything that is beneficial is also just, but only those beneficial things that have been agreed upon are. Arguably, then, agreements play a major role for Sages and so contractual justice, understood as the agreements agents form with each other is far from being irrelevant for Sages. In this context, consider also the ‘Golden Age’ fragment of Diogenes Oenoanda. It claims that in a certain state “everything will be full of justice and mutual friendship, and there will come to be no need

of city-walls or laws and all the things we manufacture on account of each other.”²⁹¹ Unfortunately, the context of this fragment is unclear and so it might also introduce a hypothetical scenario that is then ultimately dismissed as unrealistic.²⁹² It is, however, tempting to see it as the description of an established community of Sages. In any case, the text claims that in a perfectly just society laws are not needed to motivate agents to act justly.²⁹³ However, *the passage does not mention that there are no agreements in such a community*. The point seems to be that such a community does not have any need for the sanction mechanisms that are characteristic of the laws. But again, this does not imply that agreements in such a community are not needed.²⁹⁴ As I have suggested, they might still fulfill the function of specifying what is actually just in the given society, since justice is more than what is beneficial, an objective fact about the world, and also involves a component of agreement that varies from place to place.

In short, then, it seems to me that the model of moral psychology that Vander Waerdt and I endorse is compatible with the reading of the relationship of contractual and aretetic justice that Gill and Annas advance, and Gill’s criticisms fail to present a challenge to the reading that I have advanced here.

²⁹¹ Δικαιοσύνης γὰρ ἔσται μεστὰ πάντα καὶ φιλαλληλίας, καὶ οὐ γενήσεται τειχῶν ἢ νόμων χρῆα καὶ πάντων ὅσα δι’ ἀλλήλους σκευωρούμεθα. Fr. 56 Smith; Trans. by Smith; see also Barrigazzi 1978: 12ff.

²⁹² See Roskam 2007: 131ff.

²⁹³ See Müller 1991: 128.

²⁹⁴ O’Keefe points out that if one may imagine communities in which there are no agreements, it is difficult to specify what acting justly consists in these communities, especially since justice is also in part dependent on the particularities of a place (2001a: 135). As is clear from what follows, I do not think that the antecedent of the conditional holds and *pace* O’Keefe, one must distinguish between (1) justice that is based on agreements and leads to moral norms and (2) the laws, and does not acknowledge that ideally the content of both the laws and justice as a virtue is based on the agreements that different members of society have formed with each other.

To conclude this chapter, let me address two scenarios, in which it has been alleged that a Sage would violate a law (to save a friend and to murder an enemy). These discussions will allow us to clarify some more details in regard to the proposed solution.

Gerhard Seel suggests that a Sage would violate a law to save a friend.²⁹⁵ He gives no further argument for the plausibility of this scenario. The same is also true for Roskam,²⁹⁶ who rejects the possibility that a Sage would save the friend in such circumstances. There are, however, at least some passages in the Epicurean corpus that support the idea that the Epicurean Sage would do far-reaching things to benefit her friend.²⁹⁷ And so, it seems *prima facie* plausible that this might also include violating a

²⁹⁵ Seel 1996. Without engaging with previous scholarship, Seel also offers a competing explanation of the question of whether the Sage would violate a law if she knew she could escape detection. He frames the question as a conflict between the claim that the Sage never does anything that the laws prohibit and the claim that the Sage in certain circumstances does something that the laws prohibit. And he furthermore sees this conflict is expressed as a contradiction between two *Principal Maxims*. On the one hand, KD 34, according to Seel, “*sembra affermare che, oltre alla paura di essere scoperto dalle autorità competenti, non esista nessun’ altra conseguenza negativa alla trasgressione della legge.*” *Ibid.*, 344. On the other hand, KD 5 argues that the life of pleasure is the sufficient condition for the just life, which means that the Sage will be just regardless of whether negative consequences are attached to transgressing a law. In what follows, Seel then argues that KD 34 is written from the perspective of the non-Sage, whereas KD 5 is written from the perspective of the Sage. And he claims that this means that most people will need coercion and the fear of being detected to obey the law, but that the Sage will obey the content of the law willingly, without needing fear associated with the sanction mechanisms that are in place to guide her. Consequently, the conflict is solved, because KD 34 no longer provides a basis for committing injustices. There is a second motivation for the Sage to act justly, namely, the understanding of what it means to be beneficial. Seel’s proposal is largely in line with what I have outlined in this chapter, especially since Seel argues that the Sage will actually break a law. However, the problem with Seel’s approach is that given the dogmatic character of the *Kuriai Doxai*, the assumption that different *Kuriai Doxai* are articulated from different perspectives is rather unlikely. (Thanks to Andreas Kamp for this suggestion.)

²⁹⁶ Roskam 2012: 35.

²⁹⁷ The most important piece of evidence in support of such a view seems to be Diogenes Laertius, *Lives* 121b: “sometimes [the Sage] will die for a friend [ὑπὲρ φίλου ποτὲ τεθνήξασθαι].” This arguably may also entail transgressing a law, although this is not explicitly stated in the text and does not seem to be required for the Sage if he dies for a friend. Note here that much depends on the word ‘*pote*’ (‘sometimes’ or ‘at some point in time’), which seems to mirror the same indeterminacy that Epicurus expresses in the Plutarch passage. Next, in support of the

law. Yet the fundamental problem with this suggestion is that it stipulates that a Sage will be required to help a friend because this is the just thing to do. But this need not be the case. On the most basic understanding of the Epicurean view, justice consists only in an agreement to refrain from harming others, not in the duty of beneficence towards them. In other words, then, helping a friend may not be a requirement of justice for the Epicureans. An interesting case, however, would be one in which a Sage sacrifices himself for a friend vis-à-vis a potential harm from a third party, for instance, a Sage who sacrifices her own life when a wild animal attacks so that her friend can escape. However, again, even if a Sage decides to die in such a scenario, it is unclear whether this is really a requirement of justice on the Epicurean view or may above all be prompted by the fact that nothing can harm the Sage who, according to the Epicureans, will even be happy on the rack.²⁹⁸ Consequently, it is unclear whether the Sage will

view, there is also GV 56-57: “If the Sage is tortured, he feels the same pain as if his friend were tortured, and he would die for him. For if he betrays the friend, his whole life will be demolished because of this treachery and it will be upset [Ἀλγεῖ μὲν ὁ σοφὸς οὐ μᾶλλον στρεβλούμενος <ἢ στρεβλούμενου τοῦ φίλου, καὶ ὑπὲρ αὐτοῦ τεθνήσκει· εἰ γὰρ προήσεται> τὸν φίλον ὁ βίος αὐτοῦ πᾶς δι’ ἀπιστίαν συγχυθήσεται καὶ ἀνακεχαιτισμένος ἔσται].” The main problem with this passage, however, is that half of the text is supplied by an editor, Ettore Bignone. And likewise, while at Diogenes Laertius, *Lives* X.120, we read that an Epicurean Sage “will never give up a friend [φίλον τε οὐδένα προήσεται],” it is first not quite clear what ‘giving up’ entails, that is, how far the allegiance to a friend extends. And second, the manuscript does not contain the word ‘give up [proēsethai]’ at all, which is the correction proposed by Bignone, but rather ‘acquire [ktēsethai]’, which gives the sentence a quite different meaning.

²⁹⁸ Diogenes, *Lives* X.118; see also the discussion in Rosenbaum 1987. There is also some evidence that suggests that a Sage might not in the end be very rattled by what happens to a friend. In this vein, GV 66 advocates for the right attitude towards one’s friends: “Let us show sympathy for friends not by lamenting but by having them in mind [συμπαθῶμεν τοῖς φίλοις οὐ θρηνοῦντες ἀλλὰ φροντίζοντες].” Trans. mine. It is not clear to me whether the passage means that the Epicurean should merely “have his friends in mind” (as I translated above) and thus react calmly to bad news from his friends (rather than lament) or whether the Epicurean agent should adopt a mindful attitude (‘mind’ his friends) in a time when hardship has fallen upon them (rather than just lament their fate). For the first reading, see Packer Porter 1938: 100. For the second reading, see Nickel 2003: 273. In this context, see also fr. 213 Usener: “Sweet is the memory of a dead friend [ἡδὺ ἡ φίλου μνήμη τεθνηκότος].” Trans. mine. Furthermore, while friends in general are conducive to the Sage’s *ataraxia*, it seems difficult to argue that having a specific person as one’s friend will also be conducive to one’s *ataraxia*. This would be like arguing for natural and unnecessary desires, instead of natural and necessary desires. Philological issues aside, this still

violate a law for a friend, unless it can be unambiguously shown that acting justly also entails having a specific relationship towards one's friends.

This brings us to Roskam's suggestion that a Sage will violate a law to murder an enemy. In his paper, Roskam gives the example of Epicurus killing Timocrates.²⁹⁹ Timocrates was a member of the Epicurean school and the brother of Metrodorus. Other than Metrodorus, who became one of Epicurus' most faithful and most promising disciples, Timocrates left the Epicurean school and used his insider knowledge to start a campaign against his former colleagues, consisting of both theoretical refutations of Epicurean arguments and of nasty personal attacks on Epicurus.³⁰⁰ For all we know, Epicurus dealt with this annoying situation in a composed manner: He himself engaged with Timocrates' arguments and ordered his disciples to do so as well.³⁰¹ In any case, though, Roskam argues that it is fair to suppose that the apostate Timocrates was a great nuisance to Epicurus, one that greatly disturbed his *ataraxia*. Now, if Epicurus who

leaves GV 56-57 and the claim that the Sage's *ataraxia* might be seriously perturbed by the loss of a close friend and this might mean that the Sage will no longer be able to lead an undisturbed life. However, this seems difficult given Epicurean theory on the whole: Epicurus usually argues for the easiest possible way to satisfy one's desires and it seems that a Sage should be aware of the fact that emotional bonds that are too strong will not be conducive to her *ataraxia*. In any event, the understanding of the state of *ataraxia* that is required to give credence to GV 56-57 makes *ataraxia* appear to be a very volatile state. If a loss of a dear friend means the loss of *ataraxia* for life, then this again portrays *ataraxia* as a state that is capable of quantification, a view against which I argued above. It seems more likely, then, that the Epicurean Sage will again rely on conditional reasoning to determine whether she will actually help a friend.

²⁹⁹ Roskam 2012: 37ff.

³⁰⁰ Diogenes Laertius, *Lives* X.6.

³⁰¹ *Ibid.* X.23, X.28, X.117, Cicero, *On the Nature of the Gods* I.93, and Plutarch, *Against Colotes* 1126c.

himself was a Sage-like or even divine figure³⁰² had known that he could have escaped punishment, would he have killed Timocrates?

Roskam answers in the affirmative, laying out four conditions the Sage will have to fulfill in order to perform such a deed. First, according to Roskam, the Sage will not act out of emotion. Second, the Sage will probably derive no pleasure from the killing itself. Third, the murder has to serve the interests of the Garden and not be based on empty desires. And four, it has to be certain that the Sage's *ataraxia* is not disturbed by this act. "In short, *if* Epicurus decided to kill Timocrates, he would do so in cold blood, in a premeditated way, and without the slightest remorse *post factum*."³⁰³

Roskam is certainly right that for the Epicureans even murder would in principle be subject to the same conditional reasoning that all acts are subject to according to Epicurean theory. *Pace* Roskam, however, it seems that there is no good reason for the Epicurean Sage to murder anyone. One can easily explain how any agent would be willing to murder someone on the basis of non-natural desires, like the desire for fame and power. Yet a Sage will not have such desires and only cultivates natural and necessary ones. Nature, in turn, is set up in such a way that the satisfaction of these desires is easy; in fact, it seems possible without harming others, which is precisely what being just consists in. As a result, it is difficult to see what a scenario would look like in which a Sage would want to murder someone. Being greatly troubled by Timocrates' smear campaign hardly fits the bill. Diogenes Laertius even explicitly writes: "Injuries are

³⁰² This is attested by Lucretius who explicitly claims that Epicurus was a god. *On the Nature of Things* V.8. and it is also corroborated by the anecdote that Colotes, during one of Epicurus' lectures, fell down on his knees and showed his reverence to the god-like Garden philosopher. Epicurus allegedly mirrored the gesture. Plutarch, *Against Colotes* 1117b f. = fr. 141 Usener.

³⁰³ Roskam 2012: 38. Emphasis in original.

done by men either through hate or through envy or through contempt, all of which the Sage overcomes by reasoning.”³⁰⁴ Roskam’s reading, then, ascribes Epicurus a far more simple theory of moral reasoning than he in fact held.

5.5. Summary

In this chapter, I discussed a challenge to Epicurean justice: “Would the Epicurean Sage violate a law if she knew she could escape detection?” Thereby, I also discussed the motivations Epicurean agents have to be just and the relationship between aretetic and contractual justice. I argued that generally aretetic and contractual justice operate in different spheres and have different addressees, but that the two spheres overlap insofar as the content of the agreements that lead to morality both (ideally) determine the law (if it is just) and justice understood as a virtue. I therefore argued the Epicurean Sage will violate a law in circumstances in which she cannot fulfill her natural and necessary desires – even if these situations are rare and difficult to specify, as discussions of Roskam’s and Seel’s suggested scenarios showed. I argued that in such situations laws will be unjust and so that whenever the Sage violates a law she will not commit an injustice.

³⁰⁴ Βλάβας ἐξ ἀνθρώπων ἢ διὰ μῖσος ἢ διὰ φθόνον ἢ διὰ καταφρόνησιν γίνεσθαι, ὧν τὸν σοφὸν λογισμῷ περιγίνεσθαι. Diogenes Laertius, *Lives* X.117. Trans. by Bailey.

6. THE METAPHYSICS OF EPICUREAN JUSTICE

Having laid out the basic Epicurean view of justice and law and having discussed moral-psychological issues in regard to the Epicurean theory as well as the relationship between contractual and aretetic justice in previous chapters, I will now turn to metaphysical issues. By discussing the metaphysics of justice, that is, of both contractual and aretetic justice, my aim is not to make the Epicureans into something they were not, namely, metaphysicians, but rather to contribute further to our understanding of Epicurean justice by also discussing justice from the perspective of Epicurean metaphysics.³⁰⁵ Furthermore, this chapter can be understood as an addendum to the naturalism discussion in chapter 4 and it will help set up my comments about how agents come to have an understanding of justice in chapter 7.

In what follows, I will focus on KD 33 and the claim that there is no justice in itself (*kath' heauto*). More precisely, I will argue that this implies that justice is conceived of as a kind of accidental property (*sumptōma*) for the Epicureans. In doing so, I will explain in what way KD 33 entails a critique of Platonic metaphysics. *Pace* scholars who assume that KD 33 is a direct denial of the existence of Platonic Forms, I will show that Platonic ideas are only indirectly criticized in this maxim; moreover, I will argue that the critique of Plato is only intelligible when close attention is paid to Platonic and Hellenistic technical vocabulary.

The most concise statement of what Epicurean justice is from a metaphysical perspective is found in KD 33: "There is never any justice in itself [*kath' heauto*

³⁰⁵ For the view that the Epicureans reject all metaphysics in their theory, see, for instance, Goldschmidt 1977: 248 (followed by Müller 1983: 182, fn. 73).

dikaiosunē], but a kind of agreement [*sunthēkē tis*] over not harming and being harmed in the dealings with each other in any place whatever at any time whatever.”³⁰⁶ Unfortunately, this maxim by itself is rather cryptic and some set up is required to spell out what this exactly means. A good starting point is to identify a potential target of the maxim. Several commentators have proposed that it is Plato’s conception of justice, although the suggestion is usually not explained in greater detail.³⁰⁷ *Prima facie*, this suggestion seems to be motivated by Plato’s critique of Sophistic contractual theories of

³⁰⁶ οὐκ ἦν τι καθ’ἑαυτὸ δικαιοσύνη, ἀλλ’ ἐν ταῖς μετ’ ἀλλήλων συστροφαῖς καθ’ ὀπηλίκους δὴ ποτε αἰεὶ τόπους συνθήκη τις ὑπὲρ τοῦ μὴ βλάπτειν ἢ βλαπτεσθαι. A careful reader of the maxim may be quite surprised to read that Epicurus mentions *dikaiosunē*, that is, justice as a virtue, here. After all, in chapter 4, I argued that Epicurus distinguishes between justice as a virtue (aretetic justice) and justice as an agreement (contractual justice). If this distinction is correct, Epicurus claims in KD 33 that there is no *aretetic* justice ‘in itself’ and that instead, there are only agreements (that is, contractual justice) in different places and at different times. Yet given that the second part of the maxim (the part that follows after the comma) positively states that justice is “a kind of agreement,” one would have perhaps expected a different claim: that there is no *contractual* justice (*to dikaion*) ‘in itself’ and that there are only agreements in different places and at different times. After all, if KD 33 had read that there is no contractual justice in itself (*kath’ heauto dikaion*), contractual justice in itself would have been contrasted with contractual justice as it is found in different places and at different times. However, this is not what KD 33 claims. It claims that there is no aretetic justice in itself, but that there are only agreements in the world. This is more difficult to understand. However, as I argued in chapter 4, the existence and content of aretetic justice also depends on the existence and content of the contractual justice (understood as the agreements that lead to the determination of what is just in a given community): Only if there are or have been agreements, will contractual justice (*to dikaion*) have content. And, in turn, only if contractual justice has content will aretetic justice (*hē dikaiosunē*) have content, since it also depends on the agreements that are being formed among human beings. In short, then, I take that KD 33 expresses this admittedly more difficult idea and that what may strike the reader as odd can be explained in terms of the relationship between aretetic and contractual justice.

³⁰⁷ See, for instance, Philippson 1910: 293, Müller 1972: 104f., and Long and Sedley 1987: II.130 *pace* Alberti 1995: 181 (who denies the target is Plato and claims that the reference is to Epicurean ontology; it is unclear, however, why KD 33 can not be both anti-Platonic *and* entail a reference to Epicurean ontology, as already Bignone claimed in his edition of Epicurus’ texts (66f., fn. 4)). Goldschmidt 1977: 72f. attempts to provide a more detailed explanation, but fails to see that this passage needs to be situated in the debate about the Aristotelian categories and that the maxim implies that justice exists as an accidental property on the Epicurean view. The same is true for Bailey in his edition of Epicurus’ works (369) who gets the overall metaphysical implications of the maxim for the ontological status of justice right, even if he strangely refers to justice as a *sumbebēkos* rather than a *sumptōma* (more on this distinction below).

justice in *Republic* II, that is, theories, which the Epicureans revive in their writings,³⁰⁸ and by the occurrence of the word '*dikaiosunē*,' which is an important term throughout the *Republic*.³⁰⁹

While I agree with the overall assessment that Epicurus' metaphysical conception of justice entails a metaphysical critique of the Platonic conception, I will show in this chapter that scholars have too readily drawn the conclusion that the passage is a direct criticism of Platonic views. On my reading, the criticism of Plato is indirect at best. I will therefore spell out in more detail the metaphysical critique of Platonic justice that follows from KD 33 by paying close attention to the usage of the term '*kath' heauto*.' If one does so, I will claim, KD 33 can be shown to state that justice is conceived of as an accidental property (*sumptōma*) and that this understanding of justice also entails a metaphysical critique of Plato as well as other rival schools.

6.1. The Platonic View: Justice as a Form

In order to explain the admittedly complicated and roundabout metaphysical critique of KD 33, let us begin with Plato's view. It is first interesting to note that a corpus search of Plato's works shows that Plato does not use the language of KD 33: '*kath' heauto*' is never used in conjunction with '*dikaiosunē*' as one would expect if the maxim were a simple echo of a Platonic text. Furthermore, '*kath' heauto*' is only used three times total in the Platonic corpus and one of these usages is even in the *Definitions*, which are generally considered to be spurious.³¹⁰ Nevertheless, Plato comes close to

³⁰⁸ See, for instance, Müller 1972: 45ff. as well as my comments in chapter 1.

³⁰⁹ That '*dikaiosunē*' refers to justice, understood as a virtue, is left aside on this reading.

³¹⁰ See *Statesman* 273e, *Parmenides* 158d, and *Definitions* 412d. *Charmides* 158d and *Definitions* 414d have '*kath' heautou*', but of '*kata*' plus the genitive of '*heauto*' is altogether

asserting that justice is in itself, when he maintains elsewhere that justice exists ‘*auto kath’ auto*’ (itself in itself) or refers to justice ‘*auto*’ (itself).³¹¹ By using the words ‘*auto kath’ auto*’ and ‘*auto*,’ Plato famously signals that he is referring to the ‘Form (*eidos*)’ of justice. A Form, in turn, is a special metaphysical entity in Platonism, one that is characterized as not being located in time or space. Justice, so conceived, is an abstract entity,³¹² one that exists independently of just things in the world (sensible particulars), which are concrete and, as part of the spatiotemporal realm, exist in a radically different way than Forms do.

That justice, understood as a Form, is an abstract entity is the first claim that the Epicureans will take issue with in their critique of KD 33. The two others claims are that justice as a Form is a universal and that justice is among the most basic entities in the ontological schema. I take these claims to be also characteristic of the Platonic theory of Forms, although I am aware that any claim one might make about Platonic theory is bound to be controversial, since the details of Plato’s theory of Forms (especially the exact relationship between Forms and sensible particulars) are difficult to specify and

different in meaning and so can be bracketed here. The three occurrences in Plato contrast with ten in Epicurus (*Letter to Herodotus* 57, 67, 68, and 71, *Letter to Pythocles* 90, KD 8, 33, and 34, and fr. 26.41 and 37.38 Arrighetti). Not all these passages use ‘*kath’ heauto*’ in the technical sense I am about to discuss, but this simple corpus search already foreshadows the conclusion for which I am arguing here, namely, that the term ‘*kath’ heauto*’ is more widely used in Epicurus and therefore of a different significance than it is in Plato.

³¹¹ See, for instance, *Symposium* 211b. Plato also uses ‘*auto*’ to refer to the existence of the Form of justice (*Republic* 612b; see also *ibid.*, 435b). I bracket the problem of what the relationship between the Form of the *dikaion* and the Form of *diakiosunē* in Plato is (for the former, see *Parmenides* 130b).

³¹² See, for instance, *Symposium* 211a ff. Sometimes causal inertness also is taken to be part of what it means to be an abstract object. Since Forms may be thought to be causally efficacious in some way on Plato’s theory, I take abstract objects in this context to be objects that are merely outside of space and time, and I leave aside the problem of causal efficacy. On the meaning of *auto kath’ auto* and *kath’ heauto*, etc., see Ademollo 2014: 47ff. and especially Bronowski 2014: 263.

have prompted scholars to give a variety of different readings. Nevertheless let me comment on the second and third claims I just mentioned.

In regard to the second claim (that justice, as a Form, is a universal), note that there do not seem to be Forms for all kinds of sensible particulars on the Platonic view.³¹³ This means that although the theory of Forms resembles a theory of universals, it is controversial whether it actually amounts to such a theory.³¹⁴ But even if there are certain problematic cases, justice, on the Platonic view, is not one of them. As a result, the Platonic claim that justice is a Form carries an allusion to the problem of universals and so a stance on the relationship and status of the type justice vis-à-vis tokens of the type (that is, sensible particulars), even if the theory of Forms on the whole does not amount to a theory of universals.³¹⁵ Insofar as the Epicureans give a different answer to the problem of universals, this different answer can then be seen as a critique of Platonic theory.

Finally, the third claim that is entailed by the Platonic theory of Forms and the Epicureans will take issue with is the claim that the Form of Justice is among the most fundamental entities in the ontological schema. On the Platonic view, sensible particulars are said to participate (*methechein*) in or have (*exein*) a Form.³¹⁶

³¹³ In this context, compare Socrates' statement that there are no Forms of hair, mud, and dirt at *Parmenides* 130c f.

³¹⁴ This problem in regard to the Forms is also known as the one-over-many problem, best exemplified at *Republic* 596a: "[W]e customarily hypothesize a single Form in connection with each of the many things to which we apply the same name [εἶδος γὰρ πού τι ἐν ἑκάστον εἰώθαμεν τίθεσθαι περὶ ἕκαστα τὰ πολλά, οἷς ταύτων ὄνομα ἐπιφέρομεν]." Trans. by Grube/Reeve. For critical discussion, see Sedley 2014.

³¹⁵ For discussion of the type token-distinction in regard to Forms, see Mourelatos 2006: 61f.

³¹⁶ See, for instance, *Symposium* 211b, *Phaedo* 102b f., and *Republic* 476d.

Unfortunately, it is unclear what this exactly means. However, it is clear that this implies that Forms and sensible particulars are distinct entities and that Forms are more ontologically fundamental than sensible particulars. In fact, on this view, the Forms are the most real, most basic, and most fundamental ontological entity in the ontological schema,³¹⁷ while sensible particulars exist in a different way, being subjected to becoming (that is, are and are not) and in some way ontologically dependent on Forms.³¹⁸ Put differently, in stating that justice is a Form and observed in sensible particulars, Plato also implies that justice as a Form is basic, while justice as a sensible particular is not.³¹⁹

6.2. The Epicurean Metaphysical Critique of Platonic Justice and Justice as a Property

After laying out the Platonic view, I will now return to the Epicureans. I will show that in maintaining that justice does not exist in itself (*kath' heauto*), the Epicureans take issue with all three Platonic claims I just identified. For the Epicureans, (1) justice is not an abstract entity, (2) justice is not a universal in the way that the Form of justice could be said to be a universal,³²⁰ and (3) justice in no way is the most real, most basic, and most fundamental entity in the ontological schema. I will argue that the Epicurean claim that justice does not exist *kath' heauto* means that justice does not exist as a substance and so that KD 33 is advanced with specific metaphysical assumptions that are part of

³¹⁷ Accordingly, at *Phaedrus* 247c, a Form is an “*ousiaontos ousa*.” The doctrine of participation (*methexis*) is discussed, for instance, at *Phaedo* 74a ff. and 103a ff.

³¹⁸ See, for instance, *Republic* 475e ff.

³¹⁹ Note, though, that it is generally thought that on the Platonic view there may be the Form of justice without sensible particulars that instantiate the Form, but there are no just things without there also being a Form of justice.

³²⁰ Again, insofar as Plato really offers a theory of universals by advancing the theory of Forms.

the Epicurean ontological schema. In other words, I will show that the Epicurean claim that justice does not exist *kath' heauto* entails that it also does not exist *auto* or *auto kath' auto*, but that KD 33 is not a straightforward negation of a Platonic claim. The critique of Plato's view in KD 33 is more sophisticated than commentators usually seem to think.

I begin with some historical context. I have already noted that the expression '*kath' heauto*' hardly occurs in Plato, and in fact, when one examines the three passages that I cited above in more detail, it is clear that the word is not used as a technical term anywhere.³²¹ The origin of '*kath' heauto*' as a technical term must therefore lie elsewhere. I will suggest that its origin lies in Aristotle's *Categories* (even if the term itself is not used in this work).³²² Furthermore, I will argue that the expression '*kath' heauto*'

³²¹ *Statesman* 273d f. (the context is the myth of Cronus): "It is for this reason that the god who ordered it, seeing it in difficulties, and concerned that it should not, storm-tossed as it is, be broken apart in confusion and sink into the boundless sea of unlikeness, takes his position again at its steering-oars, and having turned round what has become diseased and been broken apart in the previous rotation, when the world was left to itself, orders it and by setting it straight renders it immortal and ageless [διὸ δὴ καὶ τότε ἤδη θεὸς ὁ κοσμήσας αὐτόν, καθορῶν ἐν ἀπορίαις ὄντα, κηδόμενος ἵνα μὴ χειμασθεῖς ὑπὸ παραχῆς διαλυθεῖς εἰς τὸν τῆς ἀνομοιότητος ἄπειρον ὄντα πόντον δύῃ, πάλιν ἐφεδρὸς αὐτοῦ τῶν πηδαλίων γιγνόμενος, τὰ νοσήσαντα καὶ λυθέντα ἐν τῇ καθ' ἑαυτὸν προτέρᾳ περιόδῳ στρέψας, κοσμεῖ τε καὶ ἐπανορθῶν ἀθάνατον αὐτόν καὶ ἀγήρων ἀπεργάζεται]." Trans. by Rowe. *Parmenides* 158d (the context is the third deduction): "Accordingly, it follows for things other than the one that from the one and themselves gaining communion with each other, as it seems, something different comes to be in them, which affords a limit for them in relation to each other; but by their own nature, by themselves, affords unlimitedness [Τοῖς ἄλλοις δὴ τοῦ ἐνὸς συμβαίνει ἐκ μὲν τοῦ ἐνὸς καὶ ἐξ ἑαυτῶν κοινωνησάντων, ὡς ἔοικεν, ἕτερόν τι γίνεσθαι ἐν ἑαυτοῖς, ὃ δὴ πέρας παρέσχε πρὸς ἄλληλα· ἢ δ' ἑαυτῶν φύσις καθ' ἑαυτὰ ἀπειρίαν]." Trans. by Gill and Ryan. *Definitions* 412d: "Freedom: being in control of one's life; having sole authority in all respects; power to do what one likes in life; being unsparing in using and possessing property [Ἐλευθερία ἡγεμονία βίου· αὐτοκράτεια ἐπὶ παντί· ἐξουσία τοῦ καθ' ἑαυτὸν ἐν βίῳ· ἀφειδία ἐν χρήσει καὶ ἐν κτήσει οὐσίας]." Trans. by Hutchinson.

³²² See also the important discussion of relatives in Aristotle's *Metaphysics* (V.15.1020b25ff.). While the *Magna Moralia* also contains a passage that at first sight might be thought to discuss the discussion of justice *kath' heauto* in relation to justice *pros ti* (I.33.3.1ff.), it does not seem to me that the terms '*kath' heauto*' and '*pros ti*' (or more precisely '*pros heteron*') are used in the same way that they are used in Epicurus or the other Hellenistic texts I discuss in more detail. Another important text for the origin of the term '*kath' heauto*' is Plato's *Sophist* 255c ff. See especially the discussion in Dancy 1999. Verde 2010: 198 rightly connects the discussion of the

specifically refers to the independent existence of substances, which is taken to contrast with the dependent existence of properties. In the *Categories*, Aristotle famously distinguishes between the ten highest genera, substance (*ousia*) on the one hand and nine kinds of properties on the other hand.³²³ Already in antiquity, this classification of the highest genera was contested, though. It was thought, for instance, that Aristotle's schema was not parsimonious enough, and that it could be simplified to comprise only two categories: substance and properties. The latter were usually glossed as something that exists relative to something else (*pros ti*), taking one of the nine property-categories as sufficient to sum up all others, and the former as something that can exist in itself (*kath' auto*, not yet '*kath' heauto*'). Accordingly, Simplicius reports: "others criticize the excess [in the number of Aristotelian genera] in another way. For the followers of Xenocrates and Andronicus think that everything is included in [the genera] 'in itself' [*kath' auto*] and 'relative to something' [*pros ti*] so that according to them such an abundance in genera is superfluous."³²⁴ From this simplification, it is then only a small step to existence *kath' heauto* (that is, of using the reflexive instead of the non-reflective pronoun). This becomes clear when one takes a closer look at a treatise called *Aristotle's Divisions* (*Divisiones Aristotelae*), a text that received its name in virtue of Diogenes Laertius' report that Aristotle ascribed a certain set of distinctions to Plato.³²⁵

Epicurean ontological schema with the discussion on the *Categories* that must have taken place in the Academy and Peripatos, although his comments are rather brief.

³²³ Aristotle, *Categories* 1b25ff.

³²⁴ ἄλλοι δὲ κατ' ἄλλον τρόπον αἰτιῶνται τὴν περιπτότητα. οἱ γὰρ περὶ Χενοκράτη καὶ Ἀνδρόνικον πάντα τῷ καθ' αὐτὸ καὶ τῷ πρὸς τι περιλαμβάνειν δοκοῦσιν, ὥστε περιττὸν εἶναι κατ' αὐτοὺς τὸ τοσοῦτον τῶν γενῶν πλῆθος] (Xenocrates, fr. 15 Isnardi Parente and Dorandi = *In Aristotelis Categories* 63.22-25 Kalbfleisch; see also Moraux 1973: 103.

³²⁵ *Lives* III.80. On the history of this text, see Moraux 1977, Dorandi 1996, the comments in the introduction of Rossitto's 1984 edition as well as the discussions of authors by the Tübingen School in Krämer 1959: 279ff. and Gaiser 1963: 80f. and 178f.

Scholars today universally think that Diogenes' report is not to be trusted; the text was probably written some time after Aristotle's death by an unknown author working in the Academy or Peripatos. Be this as it may, particularly interesting in the present context is the distinction that concerns different kinds of beings. According to this distinction, the realm of beings is divided into beings that exist in themselves (now finally: *kath' heauto*) and beings that exist relative to something else (*pros ti*).³²⁶ The former are roughly what would qualify as substances in antiquity, for instance, human beings and gold,³²⁷ while the latter are what would qualify as properties, for instance, size, beauty, or speed. Put differently, then, this pseudo-Aristotelian distinction of beings is clearly another example for how the ten categories were simplified to two, namely, substances and properties. In claiming that justice is not *kath' heauto*, I thus suggest that the Epicureans are not straightforwardly denying a Platonic claim, but rather following the tradition of simplifying the Aristotelian categorical schema, as exemplified by Simplicius' report and the pseudo-

³²⁶ "Of existing things some are in themselves and some are said relative to something. Things said to exist in themselves are those which need nothing in the interpretation, as man, horse, and all other animals. For none of these gains by interpretation. To those which are called relative belong all which stand in need of some interpretation, as that which is greater than something or quicker than something, or more beautiful and the like. For the greater implies a less, and the quicker is quicker than something [Τῶν ὄντων τὰ μὲν ἐστὶ καθ' ἑαυτά, τὰ δὲ πρὸς τι λέγεται. τὰ μὲν οὖν καθ' ἑαυτὰ λεγόμενά ἐστιν ὅσα ἐν τῇ ἐρμηνείᾳ μηδενὸς προσδεῖται· ταῦτα δ' ἂν εἴη οἷον ἄνθρωπος, ἵππος καὶ ἄλλα ζῶα. τούτων γὰρ οὐδὲν δι' ἐρμηνείας χωρεῖ. τῶν δὲ πρὸς τι λεγομένων ὅσα προσδεῖται τινος ἐρμηνείας, οἷον τὸ μείζον τινος καὶ τὸ θάπτον τινος καὶ τὸ κάλλιον καὶ τὰ τοιαῦτα· τὸ τε γὰρ μείζον ἐλάττωνός ἐστι μείζον καὶ τὸ θάπτον τινός ἐστι <θάπτον>]."
Diogenes Laertius, *Lives*, III.108f. Trans. by Hicks, modified. "Of the things that are some are in themselves, others in relation to something else. The former are the same in themselves, for instance, human being, house, coat, gold and everything that is without qualification, not by virtue of something else being necessarily. Those that are in relation to something are the following: the double and knowledge, for the double is said in relation to the half and knowledge in relation to something else [Τῶν ὄντων τὰ μὲν αὐτὰ καθ' ἑαυτὰ ἐστὶ, τὰ δὲ πρὸς τι. Αὐτὰ μὲν οὖν καθ' ἑαυτὰ ταῦτα ἐστὶν, οἷον ἄνθρωπος οἰκία ἱμάτιον χρυσίον καὶ πάντα ὅσα ἀπλῶς, μὴ τῷ ἑτερόν τι εἶναι ἐξ ἀνάγκης ἐστί, τὰ δὲ πρὸς τι τοιαῦτα ἐστὶν οἷον τὸ διπλάσιον καὶ ἡ ἐπιστήμη· τὸ τε γὰρ διπλάσιον πρὸς τὸ ἡμισυ λέγεται καὶ ἡ ἐπιστήμη πρὸς ἄλλο τι]."
Aristotle's Divisions 39bff. Mutschmann. Trans. mine.

³²⁷ The text also mentions artifacts such as houses and coats, which are not substances on the Aristotelian view. I take it that this move is another modification of Aristotelian theory and confirms that the text cannot be a genuine work by Aristotle.

Aristotelian *Divisions*. Of course, it is impossible to know whether the Epicureans had direct access to the *Divisions*, but the suggestion gains a little more likelihood by the rather curious fact that Epicurus may have taken courses with Xenocrates, one of the two simplifiers of the Aristotelian schema identified above.³²⁸ Be this as it may, it seems possible that the distinction between existence *kath' heauto* and *pros ti* was already established when Epicurus founded his school and that it may have been quite easy for him to pick it up.

Having commented on the evolution of the term '*kath' heauto*,' let us next turn to its specific usage of '*kath' heauto*' in Epicurean texts and discuss what it means to exist as a substance on an Epicurean view (since the Epicurean view is decidedly different from the one espoused in the *Divisions*). Yet before doing so, let me set out the dialectic of the Epicurean critique of Plato in KD 33 as I see it: *pace* commentators who take KD 33 to be a simple negation of the Platonic claim that justice exists itself in itself (*auto kath' auto*), I argue that a metaphysical critique of Platonic justice follows from KD 33 only insofar as the Epicurean ontological schema, which underlies the claim that justice does not exist in itself (*kath' heauto*), is very different from the one that underlies the Platonic claim that justice exists itself in itself (*auto kath' auto*). While Plato argues for a bipartite ontology consisting of Forms and sensible particulars, the Epicureans defend a monopartite ontology,³²⁹ which allows only body and void as existents on the same ontological plane. The difference between the Platonic and Epicurean approach is most clear in Plutarch's *Against Colotes*. In this text, the Platonist Plutarch sides with Plato

³²⁸ Diogenes Laertius, *Lives* X.13 and Cicero, *On the Nature of the Gods* I.72. See also the brief comments in DeWitt 1954: 50.

³²⁹ Bronowski 2014: 262f. On the Epicurean ontological schema, see also Renault 1975, Sedley 1988: 303ff., and Verde 2010: 197ff.

against Epicurus and his disciple Colotes.³³⁰ While the debate is not easy to fully reconstruct on the basis of Plutarch's response alone, Colotes seems to have attacked the distinction between Forms and sensible particulars, claiming that there are only what Plato classifies as sensible particulars, while Plutarch, by contrast, a defender of the theory of Forms, argues for the soundness of a bipartite ontology. Be this as it may, the upshot for our reading of KD 33 is that rather than referring to a category within a different ontological schema (namely, Plato's), the Epicureans are using a technical term that has a specific meaning within their own ontological schema. According to this technical term, justice cannot be a substance, but must be something else (that is to be specified). By contrast, in Plato, the claim that justice exists itself in itself or that there is justice itself (*auto* or *auto kath' auto*) means that justice as a Form exists *separate* from the realm of being of sensible particulars, completely distinct from them. To put the same point again differently, see the figure below that shows that the Epicureans and their supposed opponents are articulating very different claims (bold indicates the claims that are being made by the respective schools in regard to 'independent existence'):

<u>Platonic bipartite ontological schema (OS)</u>	<u>Epicurean monopartite OS</u>
Existence (E) <i>auto kath' auto</i> / <i>auto</i> (Forms)	[no equivalent]
-----	-----
E. of sensible particulars	E <i>kath' heauto</i> (substance) E. <i>pros ti</i>

³³⁰ 1115c ff. Interestingly, Plutarch in this passage also refers to the Forms as existing *kath' auto*, instead of *auto kath' auto*, which adds to the confusion in identifying the precise meaning of '*auto kath' auto*' and '*kath'heauto*.' On the passage and the argument between Colotes and Plutarch, see above all Kechagia 2011: 213ff.

Now, let us return to the three Platonic claims I distinguished above to provide more support for this reading and pull the loose strings together. Let us begin with the third claim: the Forms are the most real, the most basic, and the most fundamental of all entities in the Platonic ontology. According to this claim, even entities in the moral realm (like justice), insofar as they are Forms, are ontologically basic for Plato. In contrast to such a view, the Epicureans identify body and void as the first principles (*archai*) and insist that *everything else* can be explained in terms of them.³³¹ Complex bodies (*sunkriseis* or *sunkrimata*)³³² on this account are thus the combination of atomic ones (on account of the compatibility of the shape, size, and weight of the respective atoms).³³³ And examples of such compounds include most prominently the macro-level objects of our everyday experience such as chairs, strawberries, or human beings, but also meso-level objects such as the pores in our bodies that emit sweat, which are observable, but below the visible threshold and so not directly perceivable via sight.³³⁴

What is more, the Epicureans even claim that actions and so matters of fact ultimately can be explained in terms of bodies and void. This is most clear in a passage in Lucretius who warns that an Epicurean in training should not be tricked by her

³³¹ *Letter to Herodotus* 41.

³³² *Letter to Herodotus* 39ff.; Lucretius, *On the Nature of Things* I.1008ff. and II.333ff. In regard to the number of atoms, the Epicureans dissent from Democritus who maintains that there is a finite number of atoms (Diogenes Laertius, *Lives* IX.44).

³³³ *On the Nature of Things* II.581ff. and II.700ff. On the Epicurean view, neither is a strawberry made up of exclusively of strawberry atoms, that is, strawberry atoms all the way down, nor is it possible that all sorts of random combinations of atoms yield compounds, which allows the Epicureans to rule out physically the existence of centaurs and other chimeras. See also *ibid.* I.830ff. where Lucretius explicitly argues against the Anaxagorean doctrine of homoiomerous bodies.

³³⁴ See fr. 293 Usener where a loadstone and iron are both said to be examples of compounds. For the pores example that is used to illustrate how we can come to know something, which is by nature non-evident (*adēlon*), see Sextus, *Against the Mathematicians* VIII.306.

opponents into acknowledging that actions or matters of fact ‘exist in themselves’ (*esse per se*):

Again, when people assert that the rape of Tyndareus’ daughter [= Helen] and the subjugation of the people of Troy ‘exist,’ beware of the possibility of being trapped by them into an acknowledgement that these exist in themselves [*per se esse*], simply because those generations of human beings, of whom they were accidental properties [*eventa*], have been swept away beyond recall by ages past. For it could be said that any action [*actum*] is an accidental property [*eventum*] of the whole earth or of the actual regions in which it occurred. Moreover, if there had been no material substance, and no place and space in which all things happen, the beauty of Tyndareus’ daughter would never have fanned into flame the fire of passion smoldering deep in Phrygian Alexander’s heart, so kindling the blazing strife of savage war; nor would the wooden horse, unknown to the Trojans, have discharged from its pregnant womb under cover of night the Greeks who filled Pergama with flames. From this you may clearly see that all deeds without exception have, unlike matter, no independent existence [*per se esse*], and cannot be said in the same sense as void; rather you may with justification term them accidental properties [*eventa*] of matter and of space in which all things happen.³³⁵

In this passage, existing *per se* in Lucretius’ Latin translates existing *kath’ heauto* in Epicurus’ Greek. And in a previous passage, Lucretius affirms that the only things that exist *per se* are bodies and void, which again echoes the *Letter to Herodotus*, where bodies and void are described as ‘*kath’ heauta phuseis*.’³³⁶ In other words, to exist *kath’ heauto*, on the Epicurean view, means to the same metaphysical status as body and void. Since justice is said not to exist *kath’ heauto* in KD 33, then, it follows that justice

³³⁵ *denique Tyndaridem raptam belloque subactas/ Troiiugenas gentis cum dicunt esse, videndumst/ ne forte haec per se cogant nos esse fateri,/ quando ea saecla hominum, quorum haec eventa fuerunt,/ inrevocabilis abstulerit iam praeterita aetas;/ namque aliud terris, aliud regionibus ipsis/ eventum dici poterit quod cumque erit actum./ denique materies si rerum nulla fuisset/ nec locus ac spatium, res in quo quaeque geruntur,/ numquam Tyndaridis forma conflatus amore/ ignis Alexandri Phrygio sub pectore gliscens/ clara accendisset saevi certamina belli/ nec clam durateus Troianis Pergama partu/ inflammasset equos nocturno Graiiugenarum;/ perspicere ut possis res gestas funditus omnis/ non ita uti corpus per se constare neque esse/ nec ratione cluere eadem qua constet inane,/ sed magis ut merito possis eventa vocare/ corporis atque loci, res in quo quaeque gerantur.* Lucretius, *On the Nature of Things* I.464ff.; Trans. by Smith, modified.

³³⁶ Lucretius, *On the Nature of Things* I.419 (see also I.506) echoes the *Letter to Herodotus* 39, and *Letter to Herodotus* 68 directly mentions *kath’ heauta phuseis*, which must be body and void.

cannot be ontologically basic for the Epicureans; justice is not bodily, that is, neither a macroscopic atom nor a compound body, nor is it void on the Epicurean view. However, justice is something that depends on body and void, because in Epicureanism everything depends on body and void in some way. The passage in Lucretius describes the dependence of actions and matters of fact on body as actions and matters of fact being accidental properties (*eventa*; Greek: *sumptōmata*) of body. In light of the second half of KD 33, which aptly suggests that justice is an agreement, it then seems reasonable to suppose that on the Epicurean view, justice (as an agreement, which ontologically falls into the same camp as actions and matters of fact) is best understood as a kind of accidental property.

In the Epicurean ontological schema, accidental properties are one of two types of properties, the other being essential properties (*sumbēbekota*; Latin: *coniuncta*). According to Sextus Empiricus, who provides the most detailed description, an essential property is one that an entity cannot lose without ceasing to be that entity, while an accidental property is one an entity can lose and still remain the same entity.³³⁷ For instance, a body ceases to be a body if it no longer possesses weight, shape, or size, and fire ceases to be fire, when it is no longer hot, but a human being does not cease to be a human being if she is rich or poor. In the case of justice, it is clear that a certain action does not cease being a certain action if it is no longer just and that a person will not cease to be a person because she is no longer just.³³⁸ And so, justice for the

³³⁷ See Sextus Empiricus, *Against the Mathematicians* X.221ff. See also Lucretius, *On the Nature of Things* I.449ff. and *Letter to Herodotus* 68ff.

³³⁸ The idea that an unjust law is not a law at all is often wrongly attributed to natural law theorists. See, for instance, Kretzmann 1988: 100ff. as well as the discussion in chapter 4.

Epicureans seems to be most aptly described as a kind of an accidental property (*sumptōma*).³³⁹

Now, the details of how justice is an accidental property in Epicureanism are difficult to spell out, especially in regard to specifying the body of which it is an accidental property. In the Lucretius passage just quoted, for instance, it seems unclear whether accidental properties are predicated of bodies and space in a general way (“the whole earth”) or more directly of parts thereof (certain “generations of human beings”).³⁴⁰

³³⁹ See Glidden 1985: 212f. (also 207ff.) and Alberti 1995: 180ff. As I already indicated above, Bailey, in his edition of Epicurus’ writings, refers to justice as a *sumbēbekos*. ‘*Sumbēbekos*’ can also mean property in general rather than essential property, but he translates the term as ‘accident,’ which is strange. By contrast, Morel argues that the just should be understood as both an essential and an accidental property: “*le δίκαιον a un statut identique à la couleur, qui figure dans la liste des propriétés permanentes, mais qui peut être également classée parmi les accidents. Tout composé a une couleur, mais un corps n’a pas toujours la même couleur*” (2000: 404; but see already Giussani 1896: 27ff. who develops the core of this proposal). In other words, Morel claims that all human communities need to be just, but the way in which they are just is accidental. This is an interesting suggestion, but I think the analogy that Morel draws ultimately fails. The same move Morel suggests to distinguish having a color and having a particular color could be made for all properties. In this vein, even the color red would be essentially predicated of all red objects and then the hues of red would be equivalent to the accidental redness of the particular object in question. Yet this poses problems for the rather simple Epicurean ontological schema that would be considerably expanded to include higher and lower level properties. (On the idea of communities as that of which properties are predicated, see also the discussion below.) More importantly, though, if properties were really predicated differently relative to different referents, as Morel suggests, it seems that they would not have much explanatory power, since one can easily construct a referent, which will have a certain property as an essential property, for instance, being clever is an essential property of the clever person and being quick is an essential property of the quick man. Finally, there is no textual support for the Giussani-Morel-reading. When Lucretius enumerates accidental properties at *On the Nature of Things* I.455f., for instance, he does not indicate that poverty can also be understood as an essential property, and there is no indication of any property that is both an accidental and an essential property, depending on context in any extant Epicurean text.

³⁴⁰ A special problem in this context is whether atoms can have accidental properties and how predication works in this case. Atoms are described as featureless and so, for instance, do not possess all kinds of accidental properties: “For Epicurus maintained that the part is other than the whole, as the atom is other than the compound, since the former is devoid of quality whereas the compound has qualities [Ἐπίκουρος μὲν γὰρ ἕτερον ἤξιου τυγχάνειν τὸ μέρος τοῦ ὅλου, καθάπερ τὴν ἄτομον τοῦ συγκρίματος, εἶγε ἐκείνη μὲν ἄποιός ἐστι, τὸ δὲ συγκρίμα πεποιώται]” Sextus Empiricus, *Against the Mathematicians* IX.335; Trans. by Hicks; see also Lucretius, *On the Nature of Things* II.730ff. Does this, then, mean that movement is an accidental property of atoms, given that atoms would not cease being atoms even if they ceased to move (although in fact, they are always in motion)?

Accordingly, it is difficult to say of what entities justice is a property. One interesting possibility is that justice could be the accidental property of benefit. After all, I argued in previous chapters that justice is closely connected to benefit, and that only something that is beneficial can be just, although there may be beneficial things that are not part of an agreement between agents and so not just. On this suggestion, justice would be a higher-level property: an accidental property of something that is itself an accidental property.³⁴¹

At first, the suggestion that justice is an accidental property of an accidental property may seem quite odd.³⁴² However, there is a precedent invoking accidental properties of accidental properties (*sumptōmata sumptōmatōn*) in Epicureanism, which gives some plausibility to this reading, namely, the 2nd century BC Epicurean Demetrius Lacon who classifies time (*chronos*) as such a property.³⁴³ Unfortunately, the details of his account are unclear.³⁴⁴ However, in line with the Aristotelian idea that time is connected to movement or change (*kinesis*),³⁴⁵ Demetrius claims that time

³⁴¹ Being beneficial is also an accidental property on the Epicurean view because one can imagine something to cease to be beneficial, yet still remain to be the thing in question. For instance, a law that has ceased to be beneficial still is a law on the Epicurean view.

³⁴² See also Lucretius, *On the Nature of Things* I.459ff. where time (*tempus*) is described as an *eventum* (= *sumptōma*), not an *eventum eventi*.

³⁴³ Sextus Empiricus, *Against the Mathematicians* X.219ff. and *Outlines of Pyrrhonism* III.137 as well as Aetius I.22.5 Diels = fr. 294 Usener.

³⁴⁴ A good witness to this is Sextus who at *Against the Mathematicians* X.227 is equally struggling – just as we modern readers – to make sense of time in the Epicurean ontological schema: “Epicurus thinks that time is incorporeal, but not in the same sort of way as do the Stoics; for whereas they [...] supposed that time is an incorporeal thing conceived as self-existent, Epicurus supposed it to be a property of certain things [ὁ Ἐπικούρος ἀσώματον οἶται τὸν χρόνον ὑπάρχειν, οὐ παραπλησίως δὲ τοῖς στωικοῖς· ἐκεῖνοι μὲν γὰρ [...] ἀσώματόν τι καθ’ αὐτὸ νοούμενον ὑπεστήσαντο τὸν χρόνον, Ἐπικούρος δὲ συμβεβηκὸς τισιν.]” Trans. by Hicks.

³⁴⁵ See Aristotle, *Physics* IV.10.217b29ff.

“accompanies (*parepetai*)” movement. And he likens this accompanying to being an accidental property, which again has a precedent in Aristotle.³⁴⁶ It is not surprising, then, that day and night for Demetrius, which are understood as processes of change, of which time is an accidental property, depend on the illumination (*photismos*) or privation (*sterēsis*) of sunlight, and are thus characterized as accidental properties of air. In fact, such a description is even foreshadowed in *Letter to Herodotus*, where – immediately after the discussion of properties – we find a short and cryptic passage on time.³⁴⁷ Time is described as “a peculiar accidental property [*idion ti sumptōma*],”³⁴⁸ which seems to have prompted Demetrius to categorize time as he does, although the degree of his faithfulness to Epicurus is difficult to assess.³⁴⁹ Still, the description of justice as an accidental property of an accidental property has some appeal, given the Epicurean ontological schema and the necessity to make sense of certain non-substances.³⁵⁰

³⁴⁶ *Metaphysics* IV.1020a26ff.; see also Neck 1964: 23f. as well as her introduction.

³⁴⁷ 72f. Compare also Lucretius’ comment on time at *On the Nature of Things* I.459ff. On the Epicurean notion of time, see Barrigazzi 1959, Neck 1964, Isnardi Parente 1976, Morel 2002, Monet 2007, Verde 2008, and Goeury 2012.

³⁴⁸ *Letter to Herodotus* 73; see also *PHerc* 1413 col. 9.VII.5f. Arrighetti and Cantarella. Barrigazzi 1959: 57 argues that Usener’s emendation of *palin* to *panta* in the manuscript (*idion ti sumptōma peri tauta palin*) at *Letter to Herodotus* 73 obscures that even Epicurus had in mind that time is an accidental property of an accidental property: “Bisogna dare molto rilievo all’ avverbio πάλιν: il tempo è ‘a sua volta’ una contingenza particolare che riguarda queste cose [that is, days, nights, passions, movement, and rest].”

³⁴⁹ Note that according to Sextus, Demetrius does not make an independent claim but “interprets (*exēgeitai*)” Epicurus. It is difficult to assess the status of this interpretation. It could mean that Epicurus really said what Demetrius is claiming he said (see, for instance, Barrigazzi 1959: 53, Neck 1964: 25 and Goeury 2012) or that what follows is Demetrius’ own opinion, not Epicurus’.

³⁵⁰ A possible objection against the suggestion that justice and time are sufficiently similar from a metaphysical point of view to warrant the claim that both are accidental properties of accidental properties is that they differ in the fact that there is preconception of justice, but there might not be a preconception of time. (On preconceptions, see the more detailed discussion in chapter 7.) However, note that at *Letter to Herodotus* 72, Epicurus does not explicitly say that there is no preconception of time, as some commentators seem to think, but merely that we cannot

However, the reading just presented has some serious drawbacks, which ultimately makes it unlikely that justice is an accidental property of an accidental property for the Epicureans rather than simply an accidental property. First, the previous reading is not based on much textual evidence and would lead to some strange consequences. After all, it seems to result in a whole plethora of second-order properties and perhaps even to third-order or fourth-order properties. What for instance is benefit a property of? Agreements? If so, are agreements themselves accidental properties of institutions that then are accidental properties of the agents that make them up? This seems as strange as claiming that the property red has the property redness, which, in turn, has the property of being a color.

Second, the passages ascribed to Demetrius are the only passages in the Epicurean corpus to speak of higher-order properties. Given that no other school endorsed such properties, their existence must have also seemed unusual to ancient readers, especially if time were not a special case. If the existence of a multitude of higher-level properties were really part and parcel of Epicurean core doctrines, it is quite surprising that they are not mentioned in any other source, which usually readily criticize anything in Epicureanism that may seem odd in any way.

Third, in deciding how to best explain the passage in Demetrius that mentions accidental properties of accidental properties, it may be helpful to recall the relationship between the theory of Epicurus and that of later Epicureans. After all, most of the innovation in the Epicurean school probably took place in regard to issues that Epicurus

investigate time like other things (*ta loipa*) by turning to its preconception (which puts the burden of proof on the modern scholars to explain why).

himself had not sufficiently treated. Consequently, the exact ontological status of time may be precisely such an issue.

Finally, and perhaps most importantly, in saying that properties are of a thing, as the above analysis suggest, it seems that an Aristotelian substance theory of objecthood is being ascribed to the Epicureans. However, such an ascription may be quite mistaken. As Betegh convincingly suggests, one should distinguish between two ways of analyzing bodies in Epicureanism: physically and metaphysically.³⁵¹ In a physical analysis, compound bodies are analyzed in terms of the atoms that make them up. In a metaphysical analysis, by contrast, bodies are analyzed in terms of their properties. According to such an analysis, a body can be said to exist insofar as it is a bundle of properties, some of which are necessary to it being the body that it is and others of which are accidental to it being the body that it is. On this view, justice is an accidental property of bodies on the physical level³⁵² insofar as it is part of the bundle of properties that make up the body, but it is not an accidental property of any of the properties in the bundle because being a property just means to be part of a bundle, not to be a part of a property of the bundle. Again, though, even on such an understanding, what exactly counts as the relevant body that is the bundle of properties is left open: In accordance

³⁵¹ Betegh 2006: 280ff.

³⁵² Evidence for the ontological fundamentality of compounds besides atoms and void is found in Colotes who criticizes the view that compounds are not ontologically fundamental, ascribing such a view to Democritus: “He [Colotes] says that Democritus’ words ‘color is by convention, sweet is by convention, a compound by convention, and so the others, what is real are void and atoms’ are an attack on the senses [τὸ γὰρ νόμῳ χροιὴν εἶναι καὶ νόμῳ γλυκὺ καὶ νόμῳ σύγκρισιν <ἅπασαν, ἔτεῃ δὲ τὸ κενὸν καὶ> τὰς ἀτόμους εἰρημένον φησὶν ὑπὸ Δημοκρίτου <μάχεσθαι> ταῖς αἰσθήσεσι]” (Plutarch, *Against Colotes* 1110e; Trans. by Einarson and De Lacy). Note that the ascription to Democritus is somewhat dubious because none of other versions of the Democritean saying mentions compounds, but rather ‘bitter (*pikron*)’, ‘hot (*thermon*)’, and ‘cold (*psuchron*)’ (68DK A49, B9, 117, 125). See especially the discussion in Furley 1993: 76, fn. 7. On the difference between Democritean and Epicurean views on sensible qualities, see especially O’Keefe 1997.

with Lucretius' description above ("the whole earth", past "generations of human beings"), any phenomenological accessible body seems to be a potential candidate. And so, it seems that, in the end, it is most probable that the Epicureans, who were generally not known for their metaphysical theorizing, probably did not spell out the metaphysical details of their ontological schema.

Be this as it may, it should be clear that the Epicureans completely shake up Platonic ontology in making bodies and void ontologically basic entities (instead of Forms) and in classifying justice as an accidental property that depends on bodies. In the rest of this chapter, let us therefore briefly discuss the two other Platonic claims that I identified above in regard to Forms and see how these claims are also denied by the Epicureans. According to the second claim, Platonic justice as a Form can be understood as a kind of universal: Just things (tokens) participate in or have the Form (type) of justice. Since there is no Form of justice in Epicureanism, as in Platonism, and the Epicureans probably advance a kind of bundle theory, according to which universals are not in substances (*in re*), as they are on Aristotle's theory,³⁵³ the Epicureans have to offer a different explanation of universals.³⁵⁴ Accordingly, they may be taken to suggest a view of universals, according to which a 'universal' is understood as the class of all tokens of a type in the world.³⁵⁵ The textual evidence for this position is rather scanty.

³⁵³ Aristotle asserts "if the primary substances did not exist, it would be impossible for any of the other things to exist [μη ούσῶν οὖν τῶν πρώτων οὐσιῶν ἀδύνατον τῶν ἄλλων τι εἶναι]" (*Categories* 2b5f.; Trans. by Ackrill) and that properties are things said to be "*in* a subject [ἐν ὑποκειμένῳ]" (*ibid.* 1a20f. *et passim*; emphasis added). For the distinction between universals before, in, and after things (*ante rem*, *in re*, and *post rem*), see Ammonius, *Commentary on Porphyry's Isagoge* 41.10ff. Busse.

³⁵⁴ On this point, I have learned a lot from the discussions in Bronowski 2014 and as well as from David Sedley's talk at a workshop at the University of Tennessee in Knoxville in March 2015.

³⁵⁵ Such an account has some resemblance to trope theory. See, for instance, the discussion in Armstrong 1989: 113ff.

However, the idea is that the type red is merely the sum or class of all red tokens in the world and that there is no redness in the abstract, separate from the real-world tokens. In the case of justice, this means that Epicureans claim that justice is universal only insofar as there are the tokens of the justice in the world. There is no justice separate from these tokens. For example, this particular agreement can be just as well as that particular agreement and Epicurus, Hermarchus, and Meterodorus may all simultaneously be called just. Yet it is only the sum of all the entities in the world that are just (whatever these may be in detail), which together make up the universal 'justice.' In other words, then, in claiming in KD 33 that justice is not *kath' heauto*, which means that justice is to be understood as an accidental property and not as a Platonic Form, the Epicureans are also taking issue with the idea that there are Platonic universals (at least insofar as there are universals on Platonic theory).³⁵⁶

Finally, the first Platonic claim I identified above was that the justice qua Form is an abstract entity on the Platonic view. In contrast to such a view, the above discussion already showed that the Epicureans hold that only concrete objects exist. The Epicurean universe consists of body (*sōma*) on the one hand and void (*kenon*) on the other hand.³⁵⁷ And these two are always conceived of as concrete entities, leaving no room for abstract entities. It follows that justice on the Epicurean view is always spatiotemporal. While this is not explicitly spelled out, it seems that in the case of contractual justice, the

³⁵⁶ In other words, Epicurus (like Aristotle) importantly prefigures a view, according to which universal terms are merely names above and beyond the particulars (nominalism). However, it should be clear from the comments in this paragraph that the Epicureans do not themselves hold such a view, which only really arises in the Middle Ages. For the historical background, see de Libera 1996.

³⁵⁷ *Letter to Herodotus* 40. On the intangible nature of void, see above all Inwood 1981, Sedley 1982, and Konstan 2014. See also the parallel passage in Lucretius, *On the Nature of Things* I.418ff.

spatiotemporality refers to the actual agreement that agents form with each other, which can be said in some way to relate to atoms and void, perhaps because the agents who form agreements are themselves complexes of atoms and void. And in the case of aretetic justice, the spatiotemporality perhaps could be said to be the concrete, material soul of an agent, which is understood as an assemblage (*athroisma*) of (material) atoms.³⁵⁸

6.3. Summary

In this chapter, I argued that Epicurean justice is metaphysically understood as a property. In doing so, I commented in detail on the claim of KD 33 that there is no justice in itself (*kath' heauto*). *Pace* commentators who claim that it is a straightforward denial of a Platonic claim, I showed that the criticism of Plato's view is indirect. By using the expression '*kath' heauto*,' Epicurus draws on an understanding of the Aristotelian *Categories* and the reception thereof in Xenocrates as well as in the anonymous treatise now-called *Aristotle's Divisions*, according to which something may exist *kath' heauto*, that is, like a substance, or *pros ti*, that is, like a property. It follows from this understanding, I claimed, that justice does not exist like body or void do, on the Epicurean view, which are the only 'substances' in the ontological schema, but rather that it exists like a property. Given the other examples of properties, I maintained that justice is most likely an accidental property, and so that when one compares this Epicurean classification of justice with the Platonic one, KD 33 constitutes a whole-sale rejection of the Platonic theory and all the ideas it entails. *Pace* Plato, (1) justice is not an abstract entity, (2) justice is not a universal in the way that the Form of justice could

³⁵⁸ See *Letter to Herodotus* 63ff. as well as Lucretius, *On the Nature of Things* III.94ff. On the Epicurean conception of the soul, see Kerferd 1971 and Diano 1974: 129ff.

be said to be a universal, and (3) justice in no way is the most real, most basic, and most fundamental entity in the ontological schema.

7. EPICUREAN MORAL EPISTEMOLOGY

In this chapter, I consider the Epicurean account of how human beings come to have an understanding of what is just. I begin my discussion with their account of how a perceiver comes to have an understanding of everyday objects. Everyday objects like human beings, dogs, and cats³⁵⁹ are apprehended via sense perception on the Epicurean view, and so, in what follows, I will give a brief summary of the Epicurean theory of sense perception.³⁶⁰ I focus on the case of seeing because it is the easiest and the one that is most commonly referred to among scholars, but it should be understood that analogous explanations could be provided for the other senses as well.³⁶¹

According to the Epicureans, compound bodies, that is, the macroscopic bodies of human everyday life, emit a constant stream of images (*eidōla*).³⁶² These images are material, like the bodies that emit them; that is, they are three-dimensional hollow replicas of the things they are images of. For instance, the cat on the couch lying next to me as I write these lines, which has the ‘typical’ form of a cat, emits very fine images or

³⁵⁹ In my discussion, I set aside the special case of artifacts, since it is unclear whether the Epicurean standard theory of perception, which leads to the creation of a preconception or *prolēpsis* (to be explained in more detail below), also applies to them. For some discussion, see Fine 2014: 236, including fn. 33.

³⁶⁰ On the Epicurean theory of knowledge, see, for instance, Bailey 1964 [1928]: 232ff., Glidden 1971, Rist 1972, Striker 1977, Taylor 1980, Asmis 1984, Everson 1990, Jürss 1991, Asmis 2010 [2009], and Hahmann 2015.

³⁶¹ See *Letter to Herodotus* 52-53 (discussion of hearing and smell) as well as *On the Nature of Things* IV.522ff. (discussion of hearing, taste, and smell). For more detailed discussions of hearing and smell, see Lee 1978, Koenen 1997, and Koenen 1999.

³⁶² The most important passages to reconstruct the Epicurean theory of images are *Letter to Herodotus* 37f. as well as 46a ff. and *On the Nature of Things* IV.26ff. Also relevant is the discussion in Book II of *On Nature* (ed. Leone), although the state of the text is quite fragmentary. According to Diogenes Laertius (*Lives* X.28), Epicurus wrote treatises on images (*Peri eidōlōn*) and on sense perception (*Peri phantasias*), but these have not come down to us.

replicas of herself; these are themselves cat-shaped and perfectly reproduce her features. These cat-images then travel through space. When they eventually reach a perceiver's sensory apparatus, it 'processes' the images and gives the perceiver the presentation (*phantasia*) of a cat. This presentation, the Epicureans claim, is always true; error is only introduced if the image is processed incorrectly through some mental operation.³⁶³ In this case, the mind inadvertently adds or subtracts something from the original image, which falsifies the testimony given by the senses. If the process of seeing is repeated, perceivers are able to learn: Repeatedly seeing the same or similar objects allows perceivers to group together the different presentations of, say, a cat and so form a kind of initial concept or preconception (*prolēpsis*; pl. *prolēpseis*) thereof. This gives perceivers a functional understanding³⁶⁴ of the thing they perceived, enabling them to reliably recognize an object as the thing in question and act accordingly.³⁶⁵ In short, then, when it comes to how we come to having an understanding of the world around us,

³⁶³ See Diogenes Laertius, *Lives* X.31f. and *On the Nature of Things* IV.479ff. The latter passage discusses the famous case of the square tower that appears round when seen at a distance.

³⁶⁴ As I argue in more detail below, this functional understanding does not yet constitute knowledge. I thus throughout this chapter distinguish between knowing something, that is, being able to provide an account of the thing in question, and having an understanding of something, that is, being able to identify something in a pragmatic, functional way.

³⁶⁵ It is unclear whether a *prolēpsis* is of an individual or a universal. There is certainly no evidence of a *prolēpsis* of an individual human being, for instance, of the historical Socrates. One may therefore want to assume that there were no *prolēpseis* of individuals in Epicurean theory. See Fine 2014: 236 and Tsouna 2016: 200 *pace* Asmis 1984: 63. However, Diogenes Laertius reports at *Lives* VII.53 and 61 that there are concepts of individuals in Stoicism, which may suggest that this also applies to Epicureanism (at least if this feature of the theory of *prolēpsis*, which as a theory according to Cicero's *On the Nature of the Gods* I.43 was invented by Epicurus, and is not a Stoic innovation). Finally, complicating the matter further is the Epicurean taxonomy of genus and species terms. In his discussion of a passage in John Sikeliotes (appended to Usener's *Epicurea* in the *spicilegium fragmentorum et testimoniorum* on p. 348f.), Sedley argues in a talk given at the University of Tennessee in Knoxville that Epicurus rejected the taxonomy of entities in terms of genus and species. If this is right, then the question of whether *prolēpseis* are of individuals or universals may not be well-posed because the Epicureans do not operate with this distinction.

the Epicureans agree with the classical empiricist claim that there is nothing in the mind that was not previously in the senses.³⁶⁶

In this chapter, I largely set aside all the miscellaneous problems that concern the details of the Epicurean account of perception and instead turn to the neglected question of what consequences this standard account has for Epicurean moral epistemology. This will involve asking two questions: First, do Epicureans think that the moral case is analogous to the non-moral case just sketched? In other words, do perceivers come to have an understanding that something is just in the same way that they learn that the cat is black?³⁶⁷ And second, what kind of entities are the objects of moral cognition? Or put differently, are moral facts such as that it is just not to harm and not be harmed on this view ontologically in the same realm as non-moral facts like that Philadelphia is a city on the east coast of the United States?

I will defend the view that for the Epicureans, moral facts are learned in the same way as non-moral facts, namely, through sense perception, and that they are ontologically in the same realm as non-moral facts.³⁶⁸ I will proceed as follows. First, I will establish that it follows from the metaphysical status of the just in Epicurean theory, for which I argued at greater length in chapter 6, that perceivers can only come to know

³⁶⁶ On the Epicureans as 'empiricists,' now see Tsouna 2016: 162f.

³⁶⁷ The issues discussed in this chapter are closely related to the discussion of whether there can be "intuitive knowledge" of what is moral. See, for instance, Audi 2004 (which includes an overview of 19th and early 20th century authors who defended such view). By 'intuitive knowledge,' modern authors mean non-inferential moral knowledge. In any event, as I show below, a modern reader should note that Epicurean "intuitivism" differs from modern intuitivism insofar as modern intuitivism focuses on rational intuitions, while Epicurean intuitionism is based on empirical intuitions.

³⁶⁸ See also Glidden 1985: 212 who considers such a view as an embarrassment to Epicurean theory.

what is just via the senses and suggest that human beings have a non-inferential³⁶⁹ understanding of what is just (7.1.). Second, I explain this suggestion further by appealing to the Epicurean account of preconceptions (*prolēpseis*): I argue that *prolēpseis* are a kind of non-inferential concept³⁷⁰ based on sense data that allows agents to have an understanding of certain phenomena (7.2.). Finally, I end this chapter with some further observations on the role and political implications of the *prolēpsis* of the just for the Epicurean theory of justice (7.3.).

7.1. The Just and the Senses

In this section, I argue for the main claim of the chapter, namely, that, on the Epicurean view, that something is just is apprehended by the senses in the same way that it is apprehended that an apple is red. To do so, I will first review some key findings of chapter 6. In that chapter, I showed that the Epicureans distinguish between bodies (*sōma*) and properties (*sumbebēkota* in the broad sense of the term) of these bodies. Furthermore, the Epicureans claim that there are some properties that a body can lose without ceasing to be that body, namely, accidental properties (*sumptōmata*), and some properties that it cannot lose without ceasing to be that body, namely, essential properties (*sumbebēkota* in the narrow sense). A human being can, for example, dye her hair, that is, change the property of her hair, and even lose it altogether without ceasing to be a human being. By contrast, a human being cannot lose her soul or certain other properties without ceasing to be human. What essential properties exactly are in a

³⁶⁹ By 'non-inferential,' I mean that in forming a *prolēpsis*, the mind does not draw an inference from a certain state of affairs to a more complex state of affairs as in a syllogism where premises are aggregated to obtain a certain conclusion. As I argue in more detail below, *prolēpseis* are obtained in a way that is mechanistic. See also Goldschmidt 2006 [1978]: 47.

³⁷⁰ By 'concept,' I mean something that is in the mind, leaving open the exact nature of such an entity. On concepts, see especially chapter 1 in Laurence and Margolis 1999.

specific case is difficult to determine. However, on the assumption that being animate is such a property, it would follow that a human being who is no longer alive is also no longer a human being.³⁷¹

In accordance with this distinction between two types of properties, I already argued in chapter 6 that being just on the Epicurean view is an accidental property. The reason is that this seems to be the result when the criterion of being able to lose the property in question is applied. After all, something can cease to be just without ceasing to be the very entity in question. For example, a person does not cease to be a person because she ceases to be just; she only ceases to have the property of being just that is not essential to being a person.

Finally, I claimed in chapter 6 that this metaphysical analysis of the just entails the claim that moral properties are ontologically on par with non-moral properties. The Epicureans do not think that moral properties should be analyzed differently than non-moral ones because in their discussions of properties, they alternate moral and non-moral examples and show no sign that the two need to be treated differently. This is especially clear in the discussion of the fine and the shameful in Polystratus' *On Irrational Contempt of Common Opinions*, where it is argued that the fine and the shameful and similar entities are ontologically in the same realm as other relational

³⁷¹ I take this example from Sextus who claims that a human being for Epicurus is "such a form plus animateness [τὸ τοιοῦτον ἰσχύον μετὰ ἐμψυχίας]" (*Outlines of Pyrrhonism* II.25; see also *Against the Mathematicians* VII.267). See also Philodemus, *On Methods of Inference* col. XXXIV.5ff. De Lacy and De Lacy where a *prolēpsis* is likened to a definition (*idios logos*) and one of the examples given is that of human being as a rational animal. It might be argued that this example is misleading insofar as a *prolēpsis* does not provide an essential definition of a thing, but rather a functional one, one that allows an agent to identify something as the *definiendum*, and that an Epicurean may either be agnostic about the essential properties of human beings or not include animateness among them. In response to this, let me point out that nothing depends on the particular property of animateness; I merely chose it as a possible example of an essential property (for the lack of another, unambiguous example in any of the extant Epicurean works).

properties such as size and health.³⁷² Furthermore, it would be quite surprising if the Epicureans argued that moral properties were ontologically distinct from non-moral properties. After all, it seems the view that moral properties can be analyzed just as non-moral properties was something of a common view in antiquity. Let me explain this by briefly referring to Plato's and Aristotle's view.

While the exact scope of Plato's theory of Forms is a matter of debate that cannot be discussed in detail in this context, it is clear that examples of Forms include examples of entities both in the moral and entities in the non-moral domains. There is a Form of justice and there is a Form of the equal.³⁷³ Accordingly, it seems strange to suppose that moral entities and non-moral entities would be analyzed in radically different ways. Likewise, in the sensible realm, there is no reason to suppose that tokens of justice have a different ontological status than tokens of the equal. After all, just-tokens and equal-tokens participate in a Form, that of justice and that of the equal respectively.

In the case of Aristotle, it is likewise strange to suppose that the analysis of the *Categories* is not meant to include moral entities. After all, justice prominently features in the discussion of quality (*poiotēta*), one of the nine accidents.³⁷⁴ Certainly, Aristotle's focus in this discussion lies on justice as a virtue, but he also mentions the just (*to dikaion*) and so there is no reason to suppose that his analysis is not meant to be extended (A) to justice in other contexts and (B) to other moral entities insofar as they

³⁷² Col. XXI.17ff. Indelli.

³⁷³ See, for instance, *Phaedo* 65d and 74a.

³⁷⁴ The discussion of quality is found in chapter 8 (8b25ff.) and justice is specifically discussed at 10b12ff. (but see also 8b33).

express the property of something. There is no indication anywhere that Aristotle's framework in the *Categories* is limited in scope and that a completely different framework needs to be applied to accommodate a set of special cases. In fact, insofar as the *Categories* deal with beings (*onta*) in general, one expects that also non-moral entities are in some way accounted for. In short, then, in treating moral entities as being in the same ontological realm as non-moral entities, the Epicureans are treating entities in the moral domain in the same way that prominent thinkers of other ancient schools do.

Having established the ontological status of moral entities in relationship to non-moral entities in Epicureanism, we can finally turn to epistemological consequences of this doctrine. On the Epicurean view, it follows that there cannot be an epistemological difference in the perception of moral and non-moral entities. The reason is that the Epicurean theory of perception is based on atomistic principles. Perceivers receive their knowledge by means of the constant streams of *material* images that every body constantly emits and perception is explained solely in these terms and there is no other way that perceivers can come to know something than via these material images. Now, the cases of perceiving a cat and of perceiving the just are different insofar as the former case involves the knowledge of a bodily entity while the latter involves the knowledge of a property of a body. In other words, coming to have an understanding that, for instance, a human being is just (that justice is a property of a human being) is not quite analogous to coming to have an understanding of the cat as a whole, but rather to coming to have an understanding of one of its properties, for instance, that it is black and white (because color is a property of body). Furthermore, since properties cannot be considered without bodies of which they are properties, it would seem odd to speak of an image of justice in isolation on the Epicurean view, although the Epicureans certainly seem to refer to a

presentation (*phantasia*) of a property (even if in an abbreviated way of speaking). Accordingly, Epicurus writes: “And whatever presentation [*phantasia*] we receive by form of application, whether by the mind or by the senses, either of the form or of the properties [*sumbebēkota*], it is the form [or the properties] of the solid object, produced by the continuous compacting or residue of the image.”³⁷⁵

Again, then, there is no reason to suppose that the same atomic principles that apply to the perception of non-moral entities do not also apply to the perception of moral entities. This is also confirmed by the following passage in the *Letter to Herodotus*:

And we should not eliminate this clear evidence from what exists just because [accidental properties] do not have the nature of the entire thing which they are joined and we call a body, nor the nature of the permanent accompaniments; but neither are they to be regarded as independent natures, since this is not conceivable either in their case or in the case of permanent properties; but one must think that they all are, just as they appear, accidental properties and not permanent accompaniments nor again things which have the status of an independent nature. *But they are observed just as perception itself presents their particular traits.*³⁷⁶

The primary concern in this passage is to distinguish accidental properties from other entities that exist: first and foremost, from bodies, which are the primary entities on the Epicurean view, and, second, from essential properties, which in the text are referred

³⁷⁵ καὶ ἥν ἂν λάβωμεν φαντασίαν ἐπιβλητικῶς τῇ διανοίᾳ ἢ τοῖς αἰσθητηρίοις εἴτε μορφῆς εἴτε συμβεβηκότων, μορφή ἐστιν αὕτη τοῦ στερεομένου, γινομένη κατὰ τὸ ἐξῆς πύκνωμα ἢ ἐγκατάλειμμα τοῦ εἰδώλου. Epicurus, *Letter to Herodotus* 50; Trans. by Inwood and Gerson. Certainly, some features of this account remain mysterious, for instance, how we exactly have to understand the processes of compacting and residue. I set this problem aside, although I return to the mechanical aspect of perception below.

³⁷⁶ καὶ οὐκ ἐξελατέον ἐκ τοῦ ὄντος ταύτην τὴν ἐνάργειαν, ὅτι οὐκ ἔχει τὴν τοῦ ὅλου φύσιν ᾧ συμβαίνει ὃ δὴ καὶ σῶμα προσαγορεύομεν, οὐδὲ τὴν τῶν αἰδίων παρακολουθούντων, οὐδ' αὖ καθ' αὐτὰ νομιστέον – οὐδὲ γὰρ τοῦτο διανοητὸν οὔτ' ἐπὶ τούτων οὔτ' ἐπὶ τῶν αἰδίων συμβεβηκότων – ἀλλ' ὅπερ καὶ φαίνεται, συμπτώματα πάντα τὰ τοιαῦτα νομιστέον, καὶ οὐκ αἰδίων παρακολουθούντα οὐδ' αὖ φύσεως καθ' ἑαυτὰ τάγμα ἔχοντα, ἀλλ' ὃν τρόπον αὐτὴ ἡ αἴσθησις τὴν ἰδιότητα ποιεῖ, θεωρεῖται. Epicurus, *Letter to Herodotus* X.71; Trans. by Inwood and Gerson, modified and emphasis added.

to as “permanent accompaniments [*aidion parakolouthounta*].” Furthermore, in doing so, Epicurus makes clear (A) that accidental properties are among the things that exist³⁷⁷ and (B) that “they are observed [*theōreita*] just as perception itself presents their particular traits.” In other words, even in the case of accidental properties, the Epicureans claim that existence is confirmed by perception (*aisthēsis*). Again, the passage does not say that only *certain* accidental properties are perceived, but in fact, implies that this holds for all kinds of accidental properties, whether they are of moral or of non-moral entities.

When reading this passage, a modern reader should keep in mind, though, that the Epicurean conception of perception is broader than the modern conception. As was already signaled in the Epicurus passage quoted above (*Letter to Herodotus* 50), Epicurean perception also includes mental perception. Unfortunately, the textual evidence on this special type of perception is rather limited.³⁷⁸ Yet it seems that the *prolēpsis* of the gods is acquired through the mind (*dianoia*). How exactly this works is unclear, but the basic idea seems to be that the mind itself can also function as a kind of sense and then independently from sight, hearing, touch, smell, and taste, grasp especially fine images that enter through the pores of the body and that the other senses are not suited to detect.³⁷⁹ We will have the opportunity to discuss this mode of coming to understand certain objects in the next section, in which I discuss the Epicurean theory of *prolēpsis* and show in more detail why one could not, or at least not exclusively, have

³⁷⁷ See also the discussion in Polystratus, *On Common Conceptions* col. XXI.17ff. Indelli as well as the comments at *On the Nature of Things* I.445ff.

³⁷⁸ But see Diogenes of Oenoanda, fr. 9 Smith and Lucretius, *On the Nature of Things* IV.962ff.

³⁷⁹ On mental perception, see, for instance, Essler 2011: 57ff. In this context, ‘focusings of the mind’ (*epibolai tēs dianoias*) seem to play some important role, although their precise role is rather unclear from the extant texts. For a recent discussion, see Tsouna 2016: 186ff.

an understanding of what is just via this route. To sum up the result of this section, however, one may say that there is no indication in the Epicurean texts according to which epistemology in the moral case differs from epistemology in the non-moral case.³⁸⁰ In fact, if the just is understood as an accidental property among others, it seems to follow that it is also apprehended just as other accidental properties are apprehended, namely, by being grasped through sense perception.

7.2. The *prolēpsis* of the Just

In this section, I turn to the Epicurean account of *prolēpsis*.³⁸¹ My aim is to show that *prolēpseis* are non-inferential in nature and so to support further the thesis of the previous section that human beings have a non-inferential understanding of what is just. In doing so, I will argue against the view that the *prolēpseis* of the just constitutes a special case and so is unlike that of the *prolēpseis* of the objects (or properties) of everyday experience, that is, that it is either a higher-level *prolēpsis* or that it is obtained via mental perception rather than through perception by the five senses.³⁸²

³⁸⁰ In this context, see also Cicero's comments about Epicurean pleasure at *On Ends* I.5f. and 30f.

³⁸¹ In what follows, I have decided not to translate the term '*prolēpsis*,' since we are dealing with a technical term whose meaning is only to be (partially) expounded in the course of this section. Etymologically, the noun '*prolēpsis*' is derived from the prefix '*pro*' (before) and the verb '*lambanein*' (to take/grasp/apprehend). Hence, *prolēpsis* designates a process (as noun ending in 'sis') by which we grasp something in a 'prior way,' although *prolēpseis* seem to refer to the outcome of the process (the concept) rather than the process itself. (A similar case is the Epicurean technical term '*sunkrīsis*,' which as a noun ending in 'sis,' does not designate the process of 'compounding' of atoms, but rather the product, the compound.) The standard way of rendering the term in English is 'preconception' (Long and Sedley).³⁸¹ This is also reflected in other languages, for instance, 'prénotion' (Conche, Goldschmidt), 'prenozone' (Arrighetti), and 'Vorbegriff' (Nickel, Striker). Alternative English translations are 'anticipation' (De Witt), 'presumption' (Asmis), and 'general concept' (Bailey).

³⁸² For the former view, see Jürss 1977: 221f., Goldschmidt 2006 [1978]: 46ff., and Müller 1987: 238. For the latter view, see Essler 2011: 171.

I begin with some background and general remarks to set the stage. *Prolepseis* are one of the most cryptic and hence the most discussed technical notions in Epicureanism. A reason for this is certainly that Epicurus uses the term '*prolēpsis*' only six times in the extant writings,³⁸³ never defining what he means by it anywhere. And while '*prolēpsis*' is used in writings of other Epicureans such as Deterius Lacon³⁸⁴ and Philodemus,³⁸⁵ these texts either confirm the puzzlement a reader gets from reading Epicurus or raise issues of their own.³⁸⁶ The same is also true of two further important (non-Epicurean) sources for *prolēpseis*, Cicero's *On the Nature of the Gods* I.43f. and Diogenes Laertius' *Lives* X.31f. These texts create problems of their own, because both these authors only offer a filtered perspective on Epicurean doctrines: in the case of Cicero, a hostile one, and in the case of Diogenes, one of a compiler who makes heavy usage of non-Epicurean vocabulary. In short, the textual evidence is quite bad when it comes to *prolēpseis*.

Be this as it may, all ancient testimonia agree that the function of *prolēpseis* in Epicureanism is to help inquiry in some way: Without *prolēpseis*, there would be no

³⁸³ *Letter to Herodotus* 72, *Letter to Menoeceus* 124, KD 37 and 38, *On Nature* XXVIII fr. 12 col. III.9 and 14, and *PHerc* 1413 Arrighetti and Cantarella 10.II.4. (Usually *PHerc* 1413 Arrighetti and Cantarella is thought to belong to *On Nature* as well.) Finally, perhaps *Letter to Herodotus* 37 need to be added as well.

³⁸⁴ *PHerc* 1012, col. LXIII.2 Puglia.

³⁸⁵ *On Methods of Inference*, col. XXXIV.7 De Lacy and De Lacy; *On Piety* II. 1300 and 1887 Obbink; *On Property Management* col. XX.9; XX.17; XX.27; XXI.7f. Tsouna; *On Anger* col. XLV.2 Indelli; *Rhetoric* I.255 col. XXI.13f.; I.255 col. XXI.17; I.257 col. XXII.38f.; II.189 fr. III.7f.; II.244 col. XLII.15; II.266 col. XIa.6 Sudhaus; *On Poems* I, col. CXCIII.20 Janko; *On Poems* IV, col. CXVII.20f. Janko; *On Poems* V col. XXX.31 Mangoni. Add perhaps *On Methods of Inference* fr. I.13 De Lacy and De Lacy, *On Poems* I, col. CXCVII.17 Janko; *On Death*, col. II.11 Henry.

³⁸⁶ Lucretius uses *notitia* and *notities* at *On the Nature of Things* II.124, II. 745, IV.476, IV.479, IV.854, V.124, V.183, and V.1047. However, it is far from clear whether he is straightforwardly translating *prolēpsis* in all these passages rather than referring to another kind of concept, that is, translating *ennoia* (see Glidden 1985: 179 *pace* Tsouna 2016: 202).

investigation and hence no new knowledge.³⁸⁷ Consequently, *prolēpseis* are often linked to the question of Plato's *Meno*.³⁸⁸ In this dialogue, Plato famously investigates how we will come to know something if in fact we have no idea whatsoever of what this something we are looking for is – not even in some outline or preliminary form. In such a situation we would face a dilemma: either we would already know the thing in question and thus not need to come to know it or we would not know it and not be able to come to know it either.

While there is much dispute among scholars on what the question of the *Meno* actually consists in,³⁸⁹ at least according to one common reading, Plato's answer in some way involves the theory of Forms and the idea that all learning is recollection. According to this reading, it is because human beings have innate ideas (the Forms) in them, they already potentially know all things.³⁹⁰ These innate ideas then only need to be

³⁸⁷ The corresponding texts are fr. 255 Usener (all translations are mine): "The Epicureans allege that *prolēpseis* are the cause of our investigating and finding. They say that if something is perceived clearly, its investigation is useless, but if it is not perceived clearly, how could we investigate something, which we did not grasp beforehand, beside the *prolēpseis*? [οἱ δὲ Ἐπικούρειοι τὰς προλήψεις (αἰτιῶναι τοῦ ζητεῖν ἡμᾶς καὶ εὐρίσκειν). ἃς εἰ μὲν διηρωμένους φάσι, πεπιτητὴ ἡ ζήτησις· εἰ δὲ ἀδιάρθρωτους, πῶς ἄλλο τι παρὰ τὰς προλήψεις ἐπιζητοῦμεν ὃ γε οὐδὲ προειλήφαμεν]" (Plutarch in Olympiodorus). "According to the Sage Epicurus, there is neither investigating nor raising a difficulty without a *prolēpsis* [οὔτε ζητεῖν οὔτε ἀπορεῖν ἐστὶ κατὰ τὸν σοφὸν Ἐπικούρον ἄνευ προλήψεως]" (Sextus, *Against the Mathematicians* I.57). "No one is capable of investigating or raising a difficulty or believing nor even of dialectically proving something without a *prolēpsis* [μὴ δύνασθαι δὲ μηδὲνα μήτε ζητῆσαι μήτε ἀπορῆσαι μηδὲ μὴν δοξάσαι, ἀλλ' οὐδὲ ἐλέγξαι χωρὶς προλήψεως]" (Clemens of Alexandria, *Stromata* II.4).

³⁸⁸ *Meno* 81a ff.; see also *Phaedo* 72e ff.

³⁸⁹ See above all Scott 1995 and Fine 2014 (with references to further literature).

³⁹⁰ In the *Meno*, Plato explicitly writes that there is nothing that the soul has not learned previously: The soul is immortal and has previously "seen all things here and in the underworld, *there is nothing which it has not learned*"; so it is in no way surprising that it can recollect the things it knew before, both about virtue and other things [ἐωρακυῖα καὶ τὰ ἐνθάδε καὶ τὰ ἐν Ἄϊδου καὶ πάντα χρήματα, οὐκ ἔστιν ὅτι οὐ μεμάθηκεν· ὥστε οὐδὲν θαυμαστὸν καὶ περὶ ἀρετῆς καὶ περὶ ἄλλων οἷόν τ' εἶναι αὐτὴν ἀναμνησθῆναι, ἃ γε καὶ πρότερον ἠπίστατο]" (81c; Trans. Grube, emphasis added). Determining the exact scope of the theory of Forms and who is the subject of recollection in Plato is a notoriously difficult exercise. It seems implausible, for instance, to

actualized (recalled) in the process of learning in order for us to have knowledge of something. In the *Meno*, this is demonstrated in the elenchus with the slave boy who solves the mathematical problem of doubling the area of a square, although everyone agrees that he has had no prior knowledge of how to solve this problem.³⁹¹

Commentators usually agree *that* the Epicurean answer is decidedly different than the Platonic one, but they disagree on *how*. In fact, almost everything about *prolēpseis* other than the fact that their role in Epicurean epistemology is to help us gain knowledge has been contested. In this vein, although *prolēpseis* are mentioned besides perceptions (*aisthēseis*) and feelings (*pathē*) as one of the three Epicurean criteria of truth,³⁹² some scholars have maintained that this was not originally so.³⁹³ And similarly,

suppose that the soul also has knowledge of historical facts and came to know these potentially before the historical events occurred. However, the claim that there are some concepts that are innate, such as first concepts of equality and identity, seems much more easily defensible. Likewise, it is unclear whether Plato is offering a general theory of learning in expounding his recollection doctrine or merely discussing the way that philosophers come to know the Forms.

³⁹¹ See 82a ff. In the *Posterior Analytics*, Aristotle also takes up Meno's paradox and agrees that we can only learn something if we already have some prior understanding of the thing to be learned (I.71a1 ff.). In order to evade the dilemma posed by Meno (that is, that we can neither look for what we already know – because there is no reason to look in that case – nor look for what we do not know – because we have no idea what to look for), Aristotle distinguishes between two kinds of knowing. According to the first kind, we know something in some way but not in another (τρόπον μὲν τινα ἴσως φατέον ἐπίστασθαι, τρόπον δ' ἄλλον οὐ; 71a25f.). And according to the second way, we completely know something (ἀπλῶς [...] ἐπίσταται; 71a28f.). In other words, Aristotle solves Meno's paradox by arguing that in any investigation, we already have knowledge in the first sense, that is, knowledge that the thing one is investigating exists, which is the prerequisite for finding out what properties the object of investigation has. However, when investigating into something 'unknown', we do not have knowledge in the second sense. This is only the case "whenever we think we are aware both that the explanation because of which the object is its explanation, and that it is not possible for this to be otherwise [ὅταν τὴν τ' αἰτίαν οἰώμεθα γινώσκειν δι' ἣν τὸ πρᾶγμά ἐστιν, ὅτι ἐκείνου αἰτία ἐστί, καὶ μὴ ἐνδέχεσθαι τοῦτ' ἄλλως ἔχειν]" (71b10 ff.; Trans. Barnes).

³⁹² On the idea of a criterion of truth (*kriterion tēs alētheias*), see especially Striker 1974 and Striker 1996.

³⁹³ "Thus Epicurus, in the *Kanōn* ('Yardstick'), says that sensations, *prolēpseis*, and feelings are the criteria of truth [ἐν τοίνυν τῷ Κανόνι λέγων ἐστὶν ὁ Ἐπικούρου κριτήρια τῆς ἀληθείας εἶναι τὰς αἰσθήσεις καὶ προλήψεις καὶ τὰ πάθη.]. Diogenes Laertius, *Lives* X.31; Trans. by Long and

the classification of *prolēpsis* as a kind of ‘a priori’ in any investigation has been challenged on the basis that this ignores the textual evidence.³⁹⁴

This is not the place to develop an in-depth theory of Epicurean *prolēpseis*, which despite recent treatments is still very much a desideratum of modern Epicurean scholarship.³⁹⁵ The main aim of this section is to provide further support for the claim that human beings have a non-inferential understanding of the just. Let us thus turn to the issue of how *prolēpseis* are formed on the Epicurean view. The starting point for such an investigation is the detailed description of *prolēpseis* that we find in Diogenes Laertius:

Sedley (= 17A), modified. Furley argues that *prolēpseis* were not originally a criterion but only made into one by later doxographers (1967: 209, n.6). The same view is also spelled out in greater detail in Glidden’s dissertation, which was supervised by Furley (1971: 162ff.; see also Rist 1972: 18). Perhaps the most persuasive answer to this challenge has been given by Striker who provides a positive account of how *prolēpsis* is distinct from the other criteria sensations and feelings and explains why *prolēpseis* are an important criterion of truth in Epicureanism (1974). A related problem is when and how Epicurus introduced *prolēpseis* as a technical term. In *On Nature* XXVIII, fr. 12, col. 3 Sedley, Epicurus reports that prior to coining the term *prolēpsis*, he used other terms to express the same idea, which has important consequences for dating Epicurean works. In regard to the *Letter of Herodotus* 78, see above all Sedley’s suggestion that this passage is a later interpolation (1973: 14ff.). Sedley now seems to have slightly changed his view on this matter, though (see Janko 2000: 133, fn. 3). On the term ‘*prolēpsis*’ in the *Letter to Menoeceus* and the connected issue of dating the text, see Hessler 2014: 30.

³⁹⁴ As the name says, there is something ‘prior’ about *prolēpseis*. However, this does not mean that *prolēpseis* are prior in the sense of Kant’s *a priori*, even if Kant himself claims the Epicureans for his purposes: “*Man kann alle Erkenntnis, wodurch ich dasjenige, was zur empirischen Erkenntnis gehört, a priori erkennen und bestimmen kann, eine Antizipation nennen, und ohne Zweifel ist das die Bedeutung, in welcher Epikur seinen Ausdruck πρόληψις brauchte*” (*Critique of Pure Reason* A 166f./ B 208 = Kant 1998 [1787]). Usually, commentators agree that *prolēpsis* is formed empirically, that is, to use Obi’s phrase, its apriority “is dependent on its aposteriority” (1993: 94; see the detailed discussion below).

³⁹⁵ The most important treatments are Long 1971, Manuwald 1972, Jürss 1977, Goldschmidt 2006 [1978], Glidden 1983, Glidden 1985, Glidden 1990, Obi 1993, Everson 1994, Barnes 1996, Glidden 1996, Hammerstaedt 1996, Goggins 2007, Morel 2008, Fine 2014: 226ff., and Tsouna 2016. The discussions in Sandbach 1930 and Dyson 2009, although their focus lies on Stoic *prolēpseis*, are also relevant for the understanding of the Epicurean doctrine. Finally, since one of the most important passages on *prolēpseis* concerns the gods, the literature on Epicurean theology is also in part relevant. On this, see the references in Essler 2011 as well as the discussion below.

Prolēpseis, they [the Epicureans] say, is as it were an apprehension [*katalēpsis*], or correct opinion [*doxa orthē*], or conception [*ennoia*], or universal ‘stored notion’ [*katholikē noēsis enapokeimenē*], that is, memory of that which has frequently become evident externally: e.g. ‘Such and such a kind of thing is a man.’ For as soon as the word ‘man’ is uttered, immediately its imprint [*tupos*] also comes to mind by means of *prolēpsis*, since the senses give the lead. Thus what primarily underlies each name [*onomati to prōtōs hupotetagmenon*] is something self-evident [*enargeis*]. And what we inquire about we would not have inquired about if we had not had prior knowledge of it. For example: ‘Is what’s standing over there a horse or a cow?’ For one must at some time come to know the form [*morphē*] of a horse and that of a cow by means of *prolēpsis*. Otherwise, we could not have named something unless we knew their form according to the *prolēpsis* beforehand. Thus *prolēpseis* are self-evident.³⁹⁶

The enumeration at the beginning of the passage shows that Diogenes struggles to characterize *prolēpseis* definitely (“as it were [*hoionei*]”). He does not provide a straightforward definition of the technical term, but rather likens it to other technical terms of epistemological debates of the time.³⁹⁷ In what follows, I would like to focus on

³⁹⁶ Τὴν δὲ πρόληψιν λέγουσιν οἰονεῖ κατάληψιν ἢ δόξαν ὀρθὴν ἢ ἔννοιαν ἢ καθολικὴν νόησιν ἐναποκειμένην, τουτέστι μνήμην τοῦ πολλάκις ἔξωθεν φανέντος, οἷον τὸ τοιοῦτόν ἐστιν ἄνθρωπος· ἅμα γὰρ τῷ ῥηθῆναι ἄνθρωπος εὐθύς κατὰ πρόληψιν καὶ ὁ τύπος αὐτοῦ νοεῖται προηγουμένων τῶν αἰσθήσεων. παντὶ οὖν ὀνόματι τὸ πρῶτως ὑποτεταγμένον ἐναργές ἐστι· καὶ οὐκ ἂν ἐζητήσαμεν τὸ ζητούμενον εἰ μὴ πρότερον ἐγνώκειμεν αὐτό· οἷον τὸ πόρρω ἐστὼς ἵππος ἐστὶν ἢ βοῦς· δεῖ γὰρ κατὰ πρόληψιν ἐγνώκεναι ποτὲ ἵππου καὶ βοὸς μορφὴν· οὐδ’ ἂν ὠνομάσαμεν τι μὴ πρότερον αὐτοῦ κατὰ πρόληψιν τὸν τύπον μαθόντες. ἐναργεῖς οὖν εἰσιν αἱ προλήψεις. *Lives* X.33 (= LS 17E); Trans. by Long and Sedley, modified.

³⁹⁷ See Asmis 1984: 62ff. First, by using the word ‘*katalēpsis*’ (literally ‘grasp’), Diogenes relates *prolēpsis* to a Stoic technical notion. For the Stoics, kataleptic or comprehensible impressions (*phantasiai katalēptikai*) are clear and distinct likenesses of the things as they are (see, for instance, Diogenes Laertius, *Lives* VII.46 and 54 as well as Cicero, *Academica* II.83ff.). Consequently, they serve as the basis for (epistemological) assent and so knowledge in Stoic theory. Kataleptic impressions are characterized by the fact that they are always true. And it seems that when Diogenes characterizes *prolēpseis* as kataleptic, he above all wants to emphasize this aspect. As Asmis points out (1984: 62), though, *katalēpsis* and *katalambanō* became technical terms that were used by all schools in Hellenistic philosophy. So while *katalēpsis* is a term of Stoic origin, it is also found in several (non-suspicious) Epicurean texts. In any event, note also that a further point of communality is that for the Stoics kataleptic impressions are criteria of truth, just as for the Epicureans *prolēpseis* (paired with *aisthēseis* and *pathē*). By using ‘*doxa orthē*’, Diogenes, by contrast, refers to terms that may be recognized by Platonists. After all, Plato discusses the role of correct opinion in regard to knowledge at *Meno* 98a ff. and *Theaetetus* 201c f. And, here again, the fact that *prolēpseis* are always true seems to be the important point of comparison between the Platonic and the Epicurean conception for Diogenes. Finally, by evoking the idea of a ‘*katholikē noēsis enapokeimenē*’ and a ‘*mnēmē tou pollakis exōthen phanetos*,’ Diogenes seems to be appealing to Peripatetic ideas, as I discuss in more detail below.

Diogenes' claim that *prolēpseis* are a "universal stored notion" and "memory of that which has frequently become evident externally," which recalls the account of concept formation in Aristotle and the Stoics.³⁹⁸ According to the Aristotelian and Stoic accounts, conceptual knowledge stands at the last stage of a multi-step process. This process

³⁹⁸ This is the standard view. See, for instance, Bailey 1964 [1928]: 245f. *pace* Glidden 1985: 182. Aristotle writes: "So from perception there comes memory, as we call it, and from memory (when it occurs often in connection with the same thing), experience; for memories that are many in number form a single experience. And from experience, or from the whole universal that has come to rest in the soul (the one apart from the many, whatever is one and the same in all those things), there comes a principle of craft and of scientific knowledge – of craft knowledge if it deals with how things come about, of scientific knowledge if it deals with what is the case [Ἐκ μὲν οὖν αἰσθήσεως γίνεται μνήμη, ὥσπερ λέγομεν, ἐκ δὲ μνήμης πολλάκις τοῦ αὐτοῦ γινομένης ἐμπειρία· αἱ γὰρ πολλαὶ μνήμαι τῷ ἀριθμῷ ἐμπειρία μία ἐστίν. ἐκ δ' ἐμπειρίας ἢ ἐκ παντὸς ἡρεμήσαντος τοῦ καθόλου ἐν τῇ ψυχῇ, τοῦ ἐνὸς παρὰ τὰ πολλὰ, ὃ ἂν ἐν ἅπασιν ἐν ἐνῇ ἐκείνοις τὸ αὐτό, τέχνης ἀρχὴ καὶ ἐπιστήμης, ἐὰν μὲν περὶ γένεσιν, τέχνης, ἐὰν δὲ περὶ τὸ ὄν, ἐπιστήμης.]” *Posterior Analytics* II.19.100a3ff.; Trans. by Barnes, modified. Likewise, Aetius reports the Stoic view: "When a man is born, the Stoics say, he has the commanding-part of his soul like a sheet of paper ready for writing upon. On this he inscribes each one of his conceptions. The first method of inscription is through the senses. For by perceiving something, e.g. white, they have a memory of it when it has departed. And when many memories of a similar kind have occurred, we then say we have experience. For the plurality of similar expressions is experience. Some conceptions arise naturally in the aforesaid ways and undesignedly, others through our own instruction and attention. The latter are called 'conceptions' only, the former are called 'preconceptions' as well. Reason, for which we are called rational, is said to be completed from our preconceptions during our first seven years [οἱ Στωικοὶ φασιν· ὅταν γεννηθῇ ὁ ἄνθρωπος, ἔχει τὸ ἡγεμονικὸν μέρος τῆς ψυχῆς ὥσπερ χάρτην εὖεργον εἰς ἀπογραφὴν· εἰς τοῦτο μίαν ἐκάστην τῶν ἐννοιῶν ἐναπογράφεται. πρῶτος δὲ ὁ τῆς ἀναγραφῆς τρόπος ὁ διὰ τῶν αἰσθήσεων. αἰσθόμενοι γὰρ τινος οἷον λευκοῦ ἀπελθόντος αὐτοῦ μνήμην ἔχουσιν· ὅταν δὲ ὁμοειδεῖς πολλὰ μνήμαι γένωνται, τότε φάμεν ἔχειν ἐμπειρίαν· ἐμπειρία γὰρ ἐστὶ τὸ τῶν ὁμοειδῶν φάντασιῶν πλῆθος. τῶν δὲ ἐννοιῶν αἱ μὲν φυσικῶς γίνονται κατὰ τοὺς εἰρημένους τρόπους καὶ ἀνεπιτεχνήτως, αἱ δὲ ἤδη δι' ἡμετέρας διδασκαλίας καὶ ἐπιμελείας· αὗται μὲν οὖν ἔννοιαι καλοῦνται μόνον, ἐκείναι δὲ καὶ προλήψεις. ὁ δὲ λόγος, καθ' ὃν προσαγορευόμεθα λογικοὶ ἐκ τῶν προλήψεων συμπληροῦσθαι λέγεται κατὰ τὴν πρώτην ἐβδομάδα].” Aetius IV.11.1ff. = LS 39E); Trans. by Long and Sedley. In both cases, it is probably too rash to insist that the processes that are described are identical to the Epicurean account. In regard to the Stoics, Sandbach notes in an influential article in 1930 that it is telling that we do not have any texts that document a disagreement between the Stoics and Epicureans on what a *prolēpsis* is. He therefore reasons that this was surprising if the Stoics and the Epicureans indeed had very different conceptions of what counts as a *prolēpsis* (1930: 49f.). However, since absence of evidence is not evidence of absence, scholars have lately been backing away from such an assessment, trying to point out differences between the Stoics and the Epicureans when it comes to *prolēpseis* (see, for instance, Manuwald 1972: 14ff., Asmis 1984: 64, Glidden 1985: 179, Goggins 2007, and Dyson 2009). In particular, Asmis points out (*ibid.*) that a major difference between both the Stoics and the Aristotelians on the one hand and the Epicureans on the other hand seems to be that the Epicureans thought that *prolēpseis* were a basic pre-scientific form of understanding, while the Stoic and Aristotelian accounts seem to aim at a more sophisticated form of knowing (in this context, see also the comments in Scott 1995: 89ff.).

begins with isolated perceptions (*aisthēseis*) that are bundled in memories (*mnēmai*). Repeated memories, in turn, produce experience (*empeiria*), which, in the last step, depending on its object, yields scientific knowledge (*epistēmē*) or craft (*technē*), that is, concepts.

In contrast with Aristotle and the Stoics, the Epicurean theory does not explicitly discuss the role of experience in his account of *prolēpseis*.³⁹⁹ But the first two or three stages of the Aristotelian and Stoic account seem to map very well onto the Epicurean account, especially since Epicurus makes clear elsewhere that perceptions themselves do not involve memory.⁴⁰⁰ In other words, Epicurean *prolēpseis* can be said either to unify multiple perceptions to constitute a single memory or to form what Aristotle calls experience by being the product of multiple memories.⁴⁰¹ After all, a *prolēpsis* is a

³⁹⁹ The following discussion is heavily indebted to Dyson 2009: 115ff. ‘*Empeiria*’ is only used twice in the extant texts of Epicurus (fr. 24 Arrighetti 3.5 and 18.5).

⁴⁰⁰ At least according to Diogenes Laertius’ report: “Indeed, he says, all perceptions are irrational and not capable of receiving any memory because they neither move by themselves nor having been moved by another, are they capable of adding or subtracting something [πᾶσα γὰρ, φησὶν, αἴσθησις ἄλογός ἐστι καὶ μνήμης οὐδεμιᾶς δεκτική· οὔτε γὰρ ὑφ’ αὐτῆς κινεῖται οὔτε ὑφ’ ἑτέρου κινηθεῖσα δύναται τι προσθεῖναι ἢ ἀφελεῖν].” *Lives* X.31.

⁴⁰¹ De Witt (1964: 144f.) criticizes that Diogenes’ account that links *prolēpseis* and repeated memory as nonsensical. He claims that a child, for instance, can have a concept of a thing without seeing multiple instantiations of the thing in question; the child can recognize an elephant again, even if this was the first and only instance it has seen such an animal. There are two answers to this criticism. The first is that even when we see an elephant only once, we – according to Epicurus – have multiple images of it that impinge on our sensual apparatus. In other words, even if we see the elephant only once, we will have a *prolēpsis* of it because the one time it presented itself to us is already an aggregation of several images. Second, one could insist that the “many times” at *Lives* X.31 is meant to signal that a perceiver has to see an object enough times because commonly, it takes repeated sense impressions in order for us to form a ‘concept’ that is robust enough to be used as a certain criterion in perception. For instance, a perceiver might be instantly able to form some concept of cilantro when she sees it only once, but having formed such a concept, it might be difficult for her to distinguish cilantro from flat leaf parsley, especially if she is only acquainted with curly leaf parsley. Here, more experience with these herbs is needed so that the perceiver will be able to reliably discriminate between the two. Furthermore, as an added complication, there might be differences in learning capabilities among human beings, and arguably, someone who cannot distinguish flat leaf parsley and cilantro, even

“memory of that which has frequently become evident externally.” Accordingly, an apt metaphor for this way of understanding Epicurean *prolēpseis* is that of a composite photograph, as some commentators have suggested.⁴⁰² The idea here is that *prolēpseis* are to be understood as images that are themselves the result of series of superimposed images. This again is very much in line with the idea that presentations (*phantasiai*) come to be through the stream of images that each object emits by means of compression (*puknōma*) or residue (*egkataleimma*), as was shown above.⁴⁰³

In the context of the discussion of how human beings come to have an understanding of justice, the important upshot of this analysis is that Epicurean *prolēpseis* do not yet constitute knowledge, but are rather a more basic form of cognition.⁴⁰⁴ In other words, *prolēpseis* are not *ennoia* or *epinoiai* (concepts) if one means by this the concepts that are acquired by science. As Aristotle explains in the *Metaphysics*, an agent with experience only knows how to handle a particular case and, unlike an agent who has knowledge, does not know the reason why (*to dioti kai tēn aitian*) something is the case and is unable to teach a third party.⁴⁰⁵ Accordingly, to elucidate the way *prolēpseis* function in Epicurean theory, Diogenes Laertius, in the

if they have some idea of it, does not really have a *prolēpsis* of cilantro but rather a false supposition thereof.

⁴⁰² Bailey 1964 [1928]: 245; see also Taylor 1911: 47. For criticism of Bailey’s metaphor, see above all Glidden 1971: 171ff. For a discussion of Glidden’s criticism, see in turn Obi 1993: 98ff. as well as Asmis 1984: 65.

⁴⁰³ On *puknōma* and *egkataleimma*, see the comments in Verde 2010: 135.

⁴⁰⁴ See also Goldschmidt 2006 [1978] 46f. This raises the interesting question of whether animals are also able to have *prolēpseis*. In this context, see my discussion of animal minds in chapter 2. There, it was argued that Polystratus claims that animals do not have memory, which would mean they do not have *prolēpseis*, either.

⁴⁰⁵ Aristotle, *Metaphysics* I.1.980a26ff.

passage quoted above, gives the example of identifying an unspecified object in the distance as either a horse or a cow. Arguably, this is not a case of a *prolēpsis* being employed as an initial concept in a scientific inquiry, but rather a case where a *prolēpsis* is used as an everyday conceptual device. Nevertheless, the passage describes the kind of understanding a perceiver has, when she has a *prolēpsis*: She can classify objects she has perceived and so has a *functional understanding* of the world rather than scientific knowledge thereof, which, presumably, would be the product of more elaborate reasoning.

That *prolēpseis* do not constitute knowledge also follows from the two further considerations. First, the examples of what a *prolēpsis* conjures up when it is evoked – both in the Diogenes passage quoted above and elsewhere – suggest that there is at least some visual component to *prolēpseis*. By this, I mean that ‘*tupos*’ and ‘*morphē*’ can at least be understood as visual metaphors and as a result, a *prolēpsis* of a horse can be thought of as a kind of blueprint of a horse that allows a perceiver to compare the presentation of a horse that enters her mind via the senses with a ‘picture’ that she has been imprinted on her mind. Of course, ‘*tupos*’ and ‘*morphē*’ could also be understood as referring to an intelligible form of the object, but this cannot be said of the articulation of the *prolēpsis* of a human being as ‘such and such a form with animateness’: this strongly suggests that there is at least something pictorial about *prolēpseis*. In other words, what is important in regard to *prolēpseis*, as for Epicurean definitions, is not that they capture the *essence* of the entity that they are describing, but rather that they help

agents identify the salient properties of an entity in order to engage with this object in a practical way.⁴⁰⁶

Second, that *prolēpsis* does not yet constitute knowledge also emerges from a passage in Hermarchus that was already briefly discussed in chapter 3:⁴⁰⁷

Some of the brightest people of that time, keeping in mind that they themselves abstained from killing because this is useful for security, reminded others what would result from their association with each other, so that abstaining from their kin they would safeguard the community which was working for the individual security of each. Separating themselves out, and doing nothing to injure those who had gathered in the same place, was useful not only for excluding animals of other kinds, but also for dealing with human beings who came to do harm. For a time, then, they held back from their kinsman inasmuch as he was entering the same community for providing necessities and was making some contribution to both the purposes mentioned [that is, repelling threats from animals as well as from other human beings]. But as time went on and reproduction greatly increased, and other kinds of animals (and their dragging away of victims) had been driven out, some people acquired a rational analysis [*epilogismos*] of what was beneficial on their sustenance of each other, not just an non-rational memory [*alogos mnēmē*].⁴⁰⁸

The context for the passage is the discussion of how human beings acquire the knowledge that it is advantageous not to kill their neighbors or – in short – that it is not

⁴⁰⁶ On definitions in Epicureanism in general, see Besnier 1994, Mansfeld 1994, and Giovacchini 2003. On the idea of outline accounts (*hupographē*), which in a certain way replace definitions, see *Letter to Menoeceus* 123 along with the comments in Manuwald 1972: 57ff., Asmis 1984: 42ff., and Fine 2014: 237ff. The Epicurean rejection of definitions is found at Cicero, *On Ends* II.5f.

⁴⁰⁷ On the significance of this passage, see also Müller 1987: 236ff.

⁴⁰⁸ Διαμνημονεύοντες δέ τινες τῶν τότε χαριστάτων ὥς αὐτοί τε ἀπέσχοντο τοῦ κτείνειν διὰ τὸ χρήσιμον πρὸς τὴν σωτηρίαν, τοῖς τε λοιποῖς ἐνεποιοῦν μνήμην τοῦ ἀποβαίνοντος ἐν ταῖς μετ' ἀλλήλων συντροφαῖς, ὅπως ἀπεχόμενοι τοῦ συγγενοῦς διαφυλάττωσι τὴν κοινωνίαν, ἥ συνήργει πρὸς τὴν ἰδίαν ἐκάστου σωτηρίαν. Οὐ μόνον δὲ χρήσιμον ἦν τὸ χωρίζεσθαι μηδὲ λυμαντικὸν ποιεῖν μηδὲν τῶν ἐπὶ τὸν αὐτὸν τόπον συνειλεγμένων πρὸς τὸ τῶν ἀλλοφύλων ἐξόρισμα ζώων. ἀλλὰ καὶ πρὸς ἀνθρώπους τοὺς ἐπὶ βλάβῃ παραγινομένους. Μέχρι μὲν οὖν τινος διὰ ταύτην ἀπείχοντο τοῦ συγγενοῦς, ὅσον ἐβάδιζεν εἰς τὴν αὐτὴν κοινωνίαν τῶν ἀναγκαίων καὶ χρείας τινὰς παρείχετο πρὸς ἑκάστερον τῶν εἰρημένων· ἐλθόντος δὲ ἐπὶ πλέον τοῦ χρόνου καὶ τῆς δι' ἀλλήλων γενέσεως μακρὰν προηκούσης, ἐξεωσμένων δὲ τῶν ἀλλοφύλων ζώων καὶ τῆς παρασπάρσεως, ἐπιλογισμὸν ἔλαβον τινες τοῦ συμφέροντος ἐν ταῖς πρὸς ἀλλήλων τροφαῖς, οὐ μόνον ἄλογον μνήμην. Hermarchus fr. 34 Longo Auricchio = Porphyry, *On Abstinence* I.10.2ff.; Trans. by Clark, modified.

just to do so. Hermarchus explicitly distinguishes between the brightest human beings who possess the capacity of ‘rational analysis’ (*epilogismos*) and those, the many, who merely have an ‘irrational memory’ (*alogos mnēmē*), that is, a *prolēpsis*. In other words, then, the passage seems to suggest that in the *logismos*-phase of cultural development, which, as I argue in chapter 3, is the second phase of development, some human beings begin to acquire concepts that go beyond *prolēpseis*. Others only operate at the level of *prolēpseis*, that is, have functional concepts that allow them to structure their experience without deeper understanding of the phenomena in question. Consequently, the difference between having a *prolēpsis* and having a scientific concept lies, just as in Aristotle, in the fact that those with *logismos* have reached a more thorough understanding of an entity than those who merely possess a *prolēpsis*. Indeed, in the latter case, it seems that the mind has only processed the presentation in a minimal way, if at all, while a presentation is processed in a more comprehensive way and the perceiver has a more comprehensive understanding in the case of scientific knowledge.⁴⁰⁹

Some commentators have offered a different reading of this passage, though, and instead suggested that the difference between the preeminent individuals and the many in the passage lies in the fact that there are *prolēpseis* of higher and lower generality.⁴¹⁰ Accordingly, the above passage is taken to show that human beings

⁴⁰⁹ See also Tsouna 2016: 170 who seems to hold a similar view. Cole objects that at least some thoughts pertaining to justice require more complex reasoning than the Epicureans concede here: “Memory will tell a man to seek out his fellows when in need of help; but to say, ‘I will not kill this man; he might help me at some time in the future,’ requires forethought as well as hindsight and the art of connecting one piece of data with another which is the work of *logismos* (or, more accurately, *synesis*), not *alogos mnēmē*” (1990 [1967]: 73). I take it though that even the process of acquiring a *prolēpsis* involves some process of abstraction.

⁴¹⁰ Jürss 1977: 221f., Goldschmidt 2006 [1978]: 46ff., and Müller 1987: 238. Philodemus, *On Anger* col. XLIV.41ff, Indelli suggests that the Epicureans allowed that *prolēpseis* are

acquire ‘inferential’ *prolēpseis*, besides ‘basic’ non-inferential *prolēpseis*, at a later stage in the process of cultural development. On this reading, the brightest human beings who possess *epilogismos* do not create a *scientific* concept, as on my reading, but rather a more general *prolēpsis*. This alternative way of understanding the passage is backed by a certain understanding of a further passage in Diogenes Laertius, according to which concepts (*epinoiai*) come to be in one of four ways, by direct experience (*periptōsis*), analogy (*analogia*), likeness (*homoiotēs*), and combination (*sunthesis*).⁴¹¹ Defenders of this reading argue that basic preconceptions come about via *periptōsis*, while more general *prolēpseis* come about in other ways mentioned.

This reading, however, seems to have problems accounting for scientific concepts that are different from *prolēpseis*. After all, if more general *prolēpseis* come about by analogy, likeness, and combination, how can Epicureans appeal to scientific concepts, since nothing distinguishes these concepts in the process of formation from *prolēpseis*? Certainly, there may not be any scientific concepts on the Epicurean view, but then it seems odd and confusing that the Epicureans use other terms such as *epinoia*, *ennoēma*, *ennoia*, etc. If, by contrast, more general *prolēpseis* come about by only one or two of the three ways described in Diogenes Laertius, the Epicureans could distinguish scientific concepts and *prolēpseis* in terms of their processes of formation. However, the question of what distinguishes general *prolēpseis* and scientific concepts

hierarchically structured; some *prolēpseis* are more general than others: “It also pleases the leading men [= Epicurus, Hermarchus, Meterodorus, and Polyaenus] that the Sage does not become angry according to this *prolēpsis* but according to a more general one [ἀρέσκει δὲ καὶ τοῖς καθηγεμόσιν οὐ τὸ κατ[ὰ] τὴν πρόληψιν [τ]αύτην θυμωθῆσθαι τὸν σο[φ]όν, ἀλλὰ τὸ κατὰ τὴν κοι[v]οτέραν].” Trans. mine.

⁴¹¹ *Lives* X.32. Admittedly, the addition of “reason too contributing something [*sumballomenou ti kai tou logismos*]” (Trans. by Bailey) is rather mysterious. One would like to know what exactly reason contributes and if this is true of all four conjuncts.

in terms of their functional role within Epicureanism would still remain open. Finally, there is also a more general problem. The sentence immediately preceding the enumeration of the four ways *epinoiai* come about states that these *epinoiai* are about the *non-evident* (*adēlon*). The full passage reads: “Hence it is from the appearances [*apo tōn phainomenōn*] that we must draw inferences about the non-evident [*peri tōn adēlōn*]. For all notions [*epinoiai*] come to be by direct experience, analogy, likeness, and composition, with some slight aid from reasoning [*tou logismou*].”⁴¹²

By ‘non-evident,’ the Epicureans refer to an epistemological class of objects that is completely separate from the class of objects that are manifest, evident, or observable (*enargēs* or *prosdēlon*).⁴¹³ The prime example of *adēla* are atoms and void, since both are so small that they cannot be observed by sense experience. While atoms and void cannot be observed by the senses, the Epicureans claim that human beings can have knowledge of the void, for instance, via inferences that comes about with the help of reason. This is what Epicurus calls non-counter-witnessing (*ouk antimarturēsis*): the process by which the compatibility of the existence of something *adēlon* with what is directly manifested and plainly observed (*enargēs/ prosdēlon*) is asserted. In the case of void, one can illustrate this by the following pattern of inference:⁴¹⁴

⁴¹² ὅθεν καὶ περὶ τῶν ἀδήλων ἀπὸ τῶν φαινομένων χρή σημειοῦσθαι. καὶ γὰρ καὶ ἐπίνοιαί πᾶσαι ἀπὸ τῶν αἰσθήσεων γεγόνασιν κατὰ τε περίπτωσιν καὶ ἀναλογίαν καὶ ὁμοίότητα καὶ σύνθεσιν, συμβαλλομένου τι καὶ τοῦ λογισμοῦ. X.32; Trans. by Hicks, modified.

⁴¹³ According to Inwood and Gerson, *prosdēlon* is “something evident which does not depend on something else for its truth or knowability” (1997: 405) and *enargeia* (the noun corresponding to the adjective *enargēs*) is “an originally Epicurean term for a presentation obtained directly by the sense or the intellect without interpretative additions. Also, self-evidence” (*ibid.*: 400). On the meaning of *enargēs*, see also the discussion in Glidden 1971: 182ff. (who argues that the term should be translated as ‘clear,’ not as ‘evident’).

⁴¹⁴ Diogenes Laertius, *Lives* X.40. I am simplifying the argument and leaving aside the problem of the void as something, in which bodies come to be, which is also mentioned in the passage.

1. If there were no void, there would be no movement.
2. There is movement.
3. There is void.⁴¹⁵

Now, since *prolēpseis*, according to Diogenes Laertius' account at *Lives* X.33, were said to become evident or appear outside (*pollakis exōthen phanentos*), but *adēla* cannot do so (they are not objects of direct sense experience), it follows that there are no *prolēpseis* of things that are *adēla*.⁴¹⁶ Furthermore, this means for the Diogenes passage that we were discussing that *it does not at all comment on how prolēpseis are being formed*, but rather refer to a completely different process, namely, the process of how scientific concepts come about. Furthermore, this, of course, means for the Hermarchus passage that it probably does not describe how some people obtain *prolēpseis* of higher generality, but rather how they obtain concepts that are distinct from *prolēpseis*.

If this reading so far is correct and the intervention of the mind in the formation of *prolēpseis* is as minimal as I have argued, then *prolēpseis* can indeed be an *alogos* operation, where 'alogos' is also perhaps fittingly translated 'unreflective'.⁴¹⁷ In other words, the conclusion that on the Epicurean view, human beings have a non-inferential understanding of justice becomes more and more inevitable. Given that there is a

⁴¹⁵ While the first claim is an assumption for the sake of the inference, the second one is a direct result of sense perception, which Epicurus also refers to as witnessing (*epimaturēsis*). The third claim follows deductively from 1 and 2. On *epimaturēsis* and *antimaturēsis*, see, for instance, the discussion in Asmis 1984 as well as the remarks in Dumont 1982.

⁴¹⁶ Accordingly, Sedley and Fine also argue that there will not be any *prolēpseis* of atoms, precisely because they defy direct observation (Sedley 2011: 42 and Fine 2014: 236 *pace* Tsouna 2016: 170). Similarly problematic is the question of whether there are *prolēpseis* of imaginary beings such as centaurs. Fine (2014: 235) argues that there are not, whereas Asmis (1984: 65) takes the contrary view.

⁴¹⁷ See also Müller 1987: 237.

prolēpsis of the just⁴¹⁸ and given the way that *prolēpseis* come about, it follows that human beings receive presentations of the just via the senses in a non-inferential way and, consequently, that Epicurean perceivers must have presentations of what is just in the same way they have presentations of something being black or white.

This brings us to the second objection against the claim that human beings come to have an understanding of what is just in a non-inferential way via sense experience, namely, that knowledge of the just is not obtained by the sense at all, but by the mind. To explain this objection, some comments on the Epicurean views on the gods are in order. Unfortunately, there is not much agreement among scholars on Epicurean theology.⁴¹⁹ However, it seems that scholars do largely agree that Epicurean gods are an example of an object of which human beings acquire an understanding via the mind and not via sense perception.⁴²⁰ This is particularly interesting because it could suggest that agents do not come to understand what is just via the senses; the analogy between the non-moral and the moral, between the claims that an apple is red and that a person is just, does not hold. Yet there is some indication that the gods are indeed a special

⁴¹⁸ KD 37 and 38. Manuwald is more skeptical about whether one can say anything about the creation of the *prolēpsis* of the just (1972: 84ff.), but, following Müller 1987: 237, fn. 15, I take this view to be refuted by the passage in Hermachus that was discussed above.

⁴¹⁹ A good overview of the relevant scholarship is found in Essler 2011: 18ff. Further important contributions are Sedley 2011 (who argues for the idealist view) and Konstan 2011 (who argues for the realist view).

⁴²⁰ “Epicurus, however, who not merely discerns abstruse and recondite things with the mind, but handles them as tangible realities, teaches that the substance and nature of the gods is such that, in the first place, it is perceived not by the senses but by the mind [*Epicurus autem, qui res occultas et penitus abditas non modo videat animo sed etiam sic tractet ut manu, docet eam esse vim et naturam deorum, ut primum non sensu sed mente cernatur*].” Cicero, *On the Nature of the Gods* I.49f. Trans. by Rackham, modified.

case in Epicureanism.⁴²¹ Accordingly, they can either be said to actually exist in the interstices of the different worlds (*metakosmoi/ intermundia*), as on the so-called realist reading, or they can be said to be mere projections without a corresponding object, as on the so-called idealist reading. On both readings, though, the gods are quite unlike the just. *Pace* the realist reading that claims the gods are outside our world, the just actually exists in the phenomenal world around us and so would be directly accessible to human sense experience. And *pace* the idealist reading, the just actually exists in the world and has corresponding basic objects in our world and is not merely the product of an intellectual abstraction. In short, then, there is no reason to deny that, on the Epicurean view, human beings come to have a non-inferential understanding of what is just in the same way that they come to know that the cat is black, namely, via sense experience.⁴²²

7.3. The Political Function of the *prolēpsis* of the Just

Having laid out how agents come to have an understanding of justice above, I now turn to a different, but related feature of *prolēpseis*, namely, how agents specifically classify something as just and what significance the ability to classify something as just with the help of a *prolēpsis* has for the Epicurean theory of justice and law as a whole. In doing so, I will examine KD 37 and 38, which explicitly speak of a *prolēpsis* of the just:

⁴²¹ Obbink suggests a list of existents that may be perceived by thought. On his view, “[t]hese include not only the gods [...], but ideas of humans and horses, imaginables such as satyrs, mathematical, and certain aspects of bodies. [...] (Void/location, since it lacks the power, characteristic of body, to act upon the senses, must also be discoverable by thought)” (1996: 341).

⁴²² It seems that it is possible that insofar as the gods are just, one can have an understanding of what is just via the *prolēpsis* of the gods, but it does not follow that one can only have an understanding of what is just in this way. This would perhaps be a case where a *prolēpsis* of one thing (here: the gods) entails that of another (the just). Likewise, one may also argue that even in the case of things apprehended by the mind, the mind still relies on sense data in some way so that there is nothing that is purely perceptible by the mind. See Verde 2009: 90ff.

Among the things that are acknowledged to be just, whatever is attested to be beneficial in the requirements of mutual intercourse, has its existence in the domain of justice, whether or not it turns out to be the same for all. But if someone makes a law and it does not happen to accord to the beneficial of mutual intercourse, it no longer has the nature of justice. And even if what is beneficial in the sphere of justice changes but fits the *prolēpsis* for some time, it was no less just throughout that time for those who do not confuse themselves with empty utterances but simply look at the facts.⁴²³

Where, provided the circumstances have not been altered, things that were acknowledged to be just have been shown not to accord with the *prolēpsis* in actual practice, then they are not just. But where, when the circumstances have changed, the things acknowledged to be just no longer lead to benefit, there they were just at the same time when they were of benefit for the dealings of fellow-citizens with one another; but subsequently they are no longer just, when no longer of benefit.⁴²⁴

Following Manuwald, the texts can be summarized by five main claims, which are not mutually exclusive.⁴²⁵

1. The things acknowledged to be just (*ta nomisthenta dikaia*) are really just whenever they are beneficial (*sumphera*) in the mutual intercourse among people (KD 37).
2. If the things acknowledged to be just are not beneficial, then these things are no longer just (KD 37).

⁴²³ Τὸ μὲν ἐπιμαρτυρούμενον ὅτι συμφέρει ἐν ταῖς χρεαίαις τῆς πρὸς ἀλλήλους κοινωνίας τῶν νομισθέντων εἶναι δικαίων ἔχει τὸ ἐν τοῦ δικαίου χώραν εἶναι, ἐάν τε τὸ αὐτὸ πᾶσι γένηται ἐάν τε μὴ τὸ αὐτό. ἐάν δὲ νόμον θῇται τις, μὴ ἀποβαίνει δὲ κατὰ τὸ συμφέρον τῆς πρὸς ἀλλήλους κοινωνίας, οὐκέτι τοῦτο τὴν τοῦ δικαίου φύσιν ἔχει. κἂν μεταπίπτῃ τὸ κατὰ τὸ δίκαιον συμφέρον χρόνον δὲ τίνα εἰς τὴν πρόληψιν ἐναρμόττῃ, οὐδὲν ἦπτον ἐκεῖνον τὸν χρόνον ἦν δίκαιον τοῖς μὴ φωναῖς κεναῖς ἑαυτοὺς συνταράττουσιν ἀλλ' ἀπλῶς εἰς τὰ πράγματα βλέπουσιν. KD 37 (= LS 22B); translation by Long and Sedley, modified.

⁴²⁴ Ἐνθα μὴ καινῶν γενομένων τῶν περισσώτων πραγμάτων ἀνεφάνη μὴ ἐναρμόττοντα εἰς τὴν πρόληψιν τὰ νομισθέντα δίκαια ἐπ' αὐτῶν τῶν ἔργων, οὐκ ἦν ταῦτα δίκαια· ἐνθα δὲ καινῶν γενομένων τῶν πραγμάτων οὐκέτι συνέφερε τὰ αὐτὰ δίκαια κείμενα, ἐνταῦθα δὴ τότε μὲν ἦν δίκαια ὅτε συνέφερον εἰς τὴν πρὸς ἀλλήλους κοινωνίαν τῶν συμπολιτευομένων. ὕστερον δ' οὐκ ἦν ἔτι δίκαια, ὅτε μὴ συνέφερον. KD 38; Trans. Bailey; translation modified.

⁴²⁵ 1972: 81.

3. What is beneficial can change. However, if things that have been acknowledged to be just agree with the *prolēpsis* of the just for some time, then these things are or were just for that time (KD 37).
4. A change in circumstances aside, what is acknowledged to be just is just only if it accords with the *prolēpsis* of the just (KD 38).
5. In the event of a change in the circumstances, what was acknowledged to be just and formerly accorded with the *prolēpsis* of the just may no longer accord with the *prolēpsis*. In this case, what was acknowledged to be just is no longer just, even though it was just before the change (KD 38).

Note that there is an ambiguity in the expression “things acknowledged to be just [*ta nomisthenta dikaia*].”⁴²⁶ ‘*Nomizein*’ can mean both to enact as law and to believe. Consequently, the expression could refer to the initial agreements in the original state (which are not yet law) or it could refer to the legal enactments that are characteristic of the second phase of cultural development. While KD 37 speaks of a law that is set down, which makes the latter meaning more likely, KD 38 leaves open whether which sense to give *nomizein*. It may thus be unduly restrictive to assume that what is true of the initial agreements in regard to the *prolēpsis* is not also true of the agreements that lead to the existence of law.

Be this as it may, KD 37 and 38 explain how it is possible for the Epicureans to evaluate or classify an existing agreement as just and unjust. In doing so, the Epicureans emphasize that on their view, something is not merely just because of the *act* of the agreement that is formed among agents, that, for instance, it is not unjust to harm others merely because agents have agreed on such behavior. Rather, for the

⁴²⁶ *Ibid.*: 81, fn. 1.

Epicureans, it is ultimately just not to harm because of the content, that is, because not harming is more beneficial than the contrary. What is beneficial, in turn, is, as I argued in chapter 1, an objective fact about the world on the Epicurean view; and such a fact, I argued in the previous sections of this chapter, is directly perceived by perceivers. With this in mind, one can easily understand the distinction between things that are acknowledged to be just (*ta nomisthenta dikaia*) and those that are actually just (*ta dikaia*). At first, the reference to something ‘actually just’ may be a bit surprising. After all, I argued at length that what is just is an agreement in Epicureanism. However, in accordance with what I argued above, what is just is not merely an agreement, it is also based on facts about the world in some way, especially on what is beneficial. In asserting that what is acknowledged to be just and what is actually just can come apart, the Epicureans are able to account for the fact that some agreements are in fact unjust and that there is in fact more to an agreement than merely the act of agreeing. The success of the agreement, in other words, does not merely lie in the agreeing itself but also in the content of the agreement and its desirability given objective reality. In this vein, an agreement that would require human beings to do or not to do something that is in disagreement with what is beneficial for human nature (whatever this may be) can surely not become the content of a just agreement.

In any case, Epicurean *prolēpseis* can be used to gage what is ‘actually just’ as opposed to what has been agreed upon as just. As I explained above, having a *prolēpsis* of a thing amounts to having a functional understanding of a thing. Accordingly, the *prolēpsis* of the just is a functional understanding that human beings have of the just, independently of the agreements to which they are subjected. Since this understanding may no longer be applicable as circumstances change, the *prolēpsis* of the just offers

agents the possibility to diagnose the change in circumstances. The *prolēpsis* of the just can thus serve as the standard (*kanōn*) against which something is checked. This allows for a more nuanced understanding of justice. Agreements or laws are not merely just and unjust without qualification, but are just and unjust in reference to a point and period in time, which are added as factors to be taken into account when considering whether an agreement or law is just. An agreement or law is just whenever it corresponds to the *prolēpsis* of the just but is not just when it does not correspond to it. For instance, a law that imposes a fine on the damage of another person's property is just if it prevents this damage, being in accord with the *prolēpsis* of the just according to which what is beneficial in the mutual dealings among human beings is just. However, if the circumstances change in such a way that a fine is no longer considered an appropriate sanction mechanism, for instance, that it is too low and considered negligible and so even incentivizes damaging someone's property in case of conflicts (as opposed to other forms of retribution), then such a law on the Epicurean view is certainly no longer just, even if it was just for the time that it achieved its purpose of being beneficial.

Put again differently, in contradistinction to Thomas Hobbes, for whom there is no justice outside the law in the state of nature and hence in society, no meaningful way to criticize a law or ordinance that was issued by the sovereign as unjust,⁴²⁷ the Epicurean notion of *prolēpsis* is a tool to recognize that an agreement or law has become unjust. This is important because such a diagnosis is the prerequisite for a change so that a law may again be in accord with what is beneficial. *Pace* Reimar

⁴²⁷ At *Leviathan* XIII.13, Hobbes writes: "To this war of every man against every man, this also is consequent: that nothing can be unjust. The notions of right and wrong, justice and injustice, have there [that is, in the state of nature] no place. Where there is no common power, there is no law; where no law, no injustice."

Müller,⁴²⁸ one therefore has to agree with Antonina Alberti that *prolēpseis* are an objective criterion by the help of which things that are legislated as just can be criticized.⁴²⁹ The Epicureans neither think that the agreements of justice and the laws are merely just because they exist nor that justice and the laws are wholly relative. Instead, the agreements of justice and the laws are just because they are beneficial for the mutual relationships among human beings and correspond to *prolēpsis* of the just and this benefit is an objective fact about the world. The *prolēpsis* of the just is thus the outside criterion that allows agents to evaluate whether laws are just.

Finally, note that although *prolēpseis* are a powerful tool of diagnosing the just, the Epicureans acknowledge that people can go wrong in regard to *prolēpseis*. As a passage in the *Letter to Menoeceus* shows, the many mistake false suppositions (*hupolēpseis pseudēs*) for genuine *prolēpseis*.⁴³⁰ Furthermore, even reasonable people can disagree about how to articulate the content of a *prolēpsis* and it can be somewhat of a discursive exercise to find out what is entailed by a given *prolēpsis*.⁴³¹ Recall in this

⁴²⁸ 1972: 109.

⁴²⁹ 1995: 187ff.

⁴³⁰ 123; see also Philodemus, *Rhetoric* I.255, col. XXI.10ff. Sudhaus as well as Diogenes Laertius, *Lives* 34 and PHerc. 1251 col. IX Tsouna and Indelli.

⁴³¹ The main example of this is the *prolēpsis* of a good money-maker that is discussed in Philodemus' *On Property Management*: "We must not, on the other hand, [violate] this [sc. the meaning of the expression the 'good moneymaker'] through [the ordinary usage] of linguistic expressions, as sophists do, especially as we would be showing nothing about the acquisition and use [of wealth] pertaining to the wise man. Rather, we must refer to the preconception that we possess about a good moneymaker, ask in whom the content of that preconception is substantiated and in what manner that person makes money, and ascribe the predicate 'good moneymaker' [to whom it may be in whom] those features are attested. For just this reason, if we want to claim that, in the preconception, the good moneymaker is the one who acquires and takes care of wealth in accordance with what is advantageous, then we must proclaim the sage above all such a man. But if, on the other hand, in the preconception, we apply the quality of the good moneymaker rather to the man [who obtains for himself] many possessions with ability and experience, and also not in a dishonorable way but lawfully, however much it may be true [in this mode of acquisition] he encounters more sufferings than pleasures, then we must affirm that it is

context that the Epicureans also are not committed to the claim that all human beings have the same mental capacities: Not everyone is capable of being a Sage and human mental dispositions vary.⁴³² Consequently, it will take skill and learning to grasp a *prolēpsis* and the danger that just anyone can appeal to a *prolēpsis* to proclaim his or her view on what is just is somewhat mitigated. *Prolēpseis* are only valuable criteria of diagnosis because they are infallible guides to truth from an Epicurean point of view, but this does not mean that everyone at all times will be able to make use of such a guide.

7.4. Summary

In this chapter, I discussed Epicurean moral epistemology. I first argued that Epicurean agents come to have an understanding of justice in the same way that they have an understanding of everyday objects. I established this claim by appealing to the metaphysical status of the just as an accidental property that is ontologically in the same category as other non-moral accidental properties and to the Epicurean commitment to an atomistic theory of perception according to which all accidental properties, which includes the just, can become objects of perception. Second, I showed in this chapter that Epicurean agents not only come to have an understanding of the just via sense experience, but that this understanding is itself non-inferential, that is, that it does not

people other than sages who belong to that category [sc. of good moneymakers] [Οὐ μὴν [ἀπο]βιαστέον γε τοῦτ' ἐστὶν ὁ[ι]ὰ τῶν κατὰ τὰς ἐρμηνείας συ[νηθ]ειῶν καὶ ταῦτα μὴθ' ἐνδεικνυμένους περὶ τῆς τοῦ σοφοῦ [κ]τήσεως τε καὶ χρήσεως, ὥσπερ οἱ σοφισταὶ ποιοῦσιν, ἀλλ' ἀνάγοντας ἐπὶ τὴν ὑπάρχουσαν ἡμῖν πρόληψιν περὶ ἀγαθοῦ χρηματιστοῦ, σκεπτέον τε ἐν τίνι τὸ προειλημμένον καὶ τῷ πῶς χρηματιζομένῳ, καὶ [ῶ]ι ἂν ἐκεῖν' ἐπιμαρτυρῆται, κατηγορητέον τ[οῦ]το χρηματιστὴν ἀγαθόν· διόπερ εἰ μὲν βουλόμεθα λέγειν ἐν προλήψει τοῦτον ἀγαθὸν χρηματιστὴν τὸν κατὰ τὸ συμφέρον κτώμενον [κα]ὶ ἐπιμελόμενον π[λο]ύτου, τὸν σοφὸν μάλιστα το[ι]οῦτον εἶναι ῥητέον· εἰ [δὲ] μᾶλλον ἐπὶ τὸν δυνατῶς καὶ ἐντέχνως πολλὰ ποριζόμενον καὶ μήτε αἰσchrῶς ἐννόμ[ω]ς τε φέρομεν ἐν προλήψει τὸν ἀγαθὸν χρηματιστὴν, κἂν ὅτι μάλιστα πλεῖ[ον] κα[κο]παθῆ κτώμενος [οὔτ]ω[ς] ἥπερ ἥδεται, μᾶλ[λο]ν ἄλλο[υ]ς τῶν σοφῶν φατέον.]” (col. XX.1ff. Tsouna; Trans. by Tsouna. See also *Rhetoric*, II.244 col. XLII.15 as well as II.266 col. XIa.6 Sudhaus as well as the comments in Asmis 1984: 44 and Tsouna-McKirahan 2007: 72.

⁴³² Fr. 226 Usener.

involve syllogistic reasoning in any way. To do so, I turned to the Epicurean *prolēpseis*, which amount to a functional understanding of an object, and argued that the *prolēpsis* of the just does not constitute a special case compared to other *prolēpseis*; that is, it does not come about by inferential reasoning or mental perception. Finally, I discussed some implications of the Epicurean theory of *prolēpsis* for practical politics and I identified the main function of *prolēpsis* to allow perceivers to diagnose when what has been agreed upon as just is no longer actually just. This, I demonstrated, is particularly interesting because it means that for the Epicureans what is just is more than the act of an agreement and that there is an independent standard for assessing what is just and what is unjust, although justice on the whole is relative on the Epicurean view.

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